TITLE X.

PUBLIC WORKS

CHAPTER

24 IMPROVEMENT BY ASSESSMENT
25 SEWERS

CHAPTER 24

IMPROVEMENT BY ASSESSMENT

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ARTICLE 1. GENERAL PROVISIONS

Sec. 24-1.1. Methods.

(a) Whenever in the opinion of the Council it is desirable:

(1) to establish, open or construct any public highway, as defined by statute, including in connection therewith the construction of a sidewalk, bikeway, sanitary sewer system, storm drainage system, water system or street lighting system, or

(2) to extend, widen, alter, grade, pave, curb, macadamize or otherwise improve, to an extent exceeding maintenance or repair thereof, the whole or any part of any existing public highway, including in connection therewith the construction or improvement of a sidewalk, bikeway, sanitary sewer system, storm drainage system, water system or street lighting system, or

(3) to construct or improve a sanitary sewer system, storm drainage system, street lighting system, water system, sidewalk, or bikeway independently of any other construction or improvement, or

(4) to acquire property for or construct or improve pedestrian malls, or

(5) to acquire property for or construct or improve off-street parking facilities as provided in Chapter 56, Hawaii Revised Statutes, or

(6) to acquire property for or construct or improve parks or playgrounds as provided in Section 24-1.3 hereof,

such acquisitions, betterments, or improvements may be made and done under the provisions of this chapter; provided that in the case of a sidewalk which is to be constructed independently of any other improvement, the highway along which the construction of such sidewalk is proposed shall have a right-of-way width at least equal to the width indicated by County standards; and the cost thereof, (including the cost, if not assumed by the County under the discretionary power contained in Section 24-2.1, of acquiring, whether prior to or after the commencement of the proceedings for such betterments or improvements, any new land therefor) shall be assessed against the land specially benefited, either on the frontage basis or according to the area of the land or any other assessment method which assesses the land according to the special benefits conferred, or any combination of the aforesaid methods of assessment; provided that wherever the frontage or area basis assessment are mentioned in sections and provisions contained hereinafter such valuation method may be used, either alone or in combination with one or more of the aforesaid methods of assessment; and provided further that the County may issue and sell bonds to provide the funds for such improvements, which bonds for an improvement or improvements initiated by the County pursuant to Section 24-3.1 only may, in the sole discretion of the Council, be either general obligation bonds of the County (or the funds for such improvement or

improvements may be provided from the special assessment revolving fund or from both the special assessment revolving fund and the issuance and sale of general obligation bonds) or bonds secured only by such assessments as a lien upon the lands assessed, and for an improvement or improvements initiated pursuant to Sections 24-3.2 and 24-3.3 shall be only bonds secured only by such assessments as a lien upon the lands assessed; and for such purposes the Council may create, define and establish improvement districts, all according to the provisions of this chapter.

(b) Nothing in this chapter shall prevent the County from compelling abutting property owners at their own expense to construct, maintain and repair sidewalks and curbs in front of the abutting property under any other statute or ordinance, now existing or hereafter to be enacted.

(c) Nothing in this chapter shall prevent the County or the Board of Water Supply, from constructing, improving, maintaining and repairing any sanitary sewer system, storm drainage system, street lighting system or water system, as the case may be, as empowered by any other statute or ordinance, now existing or hereafter to be enacted.

(d) Nothing contained in this chapter shall prevent the County from making the betterments or improvements referred to in subsection (a) above, if property owners and the Council mutually agree to share the cost of such betterments or improvements and the estimated amount of such cost to be borne by the property owners is deposited with the County prior to the award of the construction contract; provided that the proportionate share of the cost to be borne by the property owners and the County shall be subject to revision upon the determination of the actual cost of the betterment or improvement. (Ord. No. 145, December 17, 1969; Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-1.2. (Reserved.)

Sec. 24-1.3. Parks And Playgrounds.

Whenever deemed desirable or necessary in the interests of the public, the Council may establish an improvement district for the purpose of acquiring property for, or constructing or improving a park or playground in conformity with the provisions of this chapter; provided that nothing contained herein shall be construed to limit the power of the Council to provide for the acquisition of property or construction or improvement for the same purposes without levying assessments. (Ord. No. 550, February 10, 1989)

Sec. 24-1.4. Powers Reserved To Council.

Any provision of law to the contrary notwithstanding, the Council reserves the following powers over any improvement district proposal, whether County-initiated or initiated by petition of owners:

(1) If, for any reason whatsoever, the improvement district bonds authorized under this chapter are not sold or cannot be sold to any acceptable purchaser within a reasonable time, then the Council shall have the power and authority to terminate the entire improvement district project, or any part thereof. In the event that the project is terminated, in the case of petitions by owners, the petitioners shall be responsible for all costs incurred by the County for such improvement district. The County may assure such repayment by requiring reasonable deposits therefor.

(2) In addition to the foregoing, at any time during the proceedings of any improvement district proposal up to and including the adoption of the assessment ordinance, the Council shall have the power and authority to terminate the entire improvement district project, or any part thereof, if it determines that the improvement district project is not in the public interest.

(3) In addition to the foregoing, at any time during the proceedings of any improvement district proposal up to and including the adoption of the assessment ordinance, the Council shall have the power and authority to require the inclusion of costs of off-site improvements such as roads, water, sewers, drainage, which may be outside the improvement district boundaries but which service the improvement district. In the event that such costs are to be so included, the appropriate resolutions and ordinances shall be amended accordingly. (Ord. No. 550, February 10, 1989)

Sec. 24-1.5. Applicability.

(a) This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this article, which does not directly affect the jurisdiction of the Council to order the improvement, shall void or invalidate such proceeding or any assessment for the cost of the improvement. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the Council.

(b) Effect of error in mailing. The failure to mail any notice to any owner or lessee of property within the proposed improvement district and proposed to be assessed, or the failure of any such owner or lessee to receive any notice shall not affect the validity of any proceeding

taken pursuant to this article, unless a failure to mail any particular notice occurs with respect to a sufficient number of owners or lessees to demonstrate gross negligence or lack of good faith effort in the mailing thereof.

(c) Errors in computation. No bond, coupon, assessment, or installment thereof or interest or penalties thereon, certificate of sale or deed shall be held invalid for any error in the computation of the proper amount due on the same, if the error is found to be comparatively negligible, or is found to be in favor of the owner of the bond, coupon or real property affected thereby. (Ord. No. 550, February 10, 1989)

ARTICLE 2. COSTS.

Sec. 24-2.1. Costs To Be Borne By The County.

(a) Except where an improvement or improvements are made pursuant to Section 24-3.2 or Section 24-3.3, the County may pay out of any funds available for such purposes the cost of engineering, incidentals, inspections, surveys, maps, plans, specifications, other engineering data, land acquisition, publication of notices of hearing, mailing notices to owners and lessees, services of legal counsel, services of bond counsel, printing of bonds, preparation and printing of an official statement relating to the bonds, publication and distribution of the notice of sale of bonds, execution and delivery of bonds, registrars' and paying agents' fees and expenses, other reimbursements to registrars and paying agents and publication and mailing of notices of redemption, rating agency fees, the cost of funding a debt service reserve fund for the payment of the principal of and interest on bonds, premiums for municipal bond insurance to insure the timely payment of the principal of and interest on bonds and/or to insure in lieu of funding a debt service reserve fund for bonds and fees for letters of credit and other credit enhancements to secure the timely payment of the principal of and interest on bonds. The County may also assume the following costs: in case of an improvement district which is assessed only on a frontage basis, the cost assessable against the frontage or frontages of an adjoining or cross street, or in the case of an improvement district which is assessed on an area basis or an area and frontage basis, the cost of improving the surface area common to both streets at the intersection of any cross street or one-half of the surface area opposite the intersection of any adjoining street, and fifty percent of the total cost of general improvements (which is the cost of the entire improvement, excluding such cost heretofore mentioned in the preceding sentence as may be paid by the County and the cost for the

sewer system and driveway aprons) upon or along all main or general thoroughfares, as hereinafter defined and upon or along all other streets or highways; provided that in the case of a main or general thoroughfare, the County may pay out of available funds the cost of all or any part of that portion of a pavement in excess of standard widths. A main or general thoroughfare within the meaning hereof is any street or highway as is subjected to more than ordinary traffic and travel by the general public, or which serves as a generally necessary connecting thoroughfare between substantially different or naturally separate localities or sections, or which serves as a generally necessary connecting thoroughfare between districts.

(b) The Council, whenever in its judgment determines that the interests of the County will be best served by protecting the County from claims for damages from surface waters, may provide for the collection and disposition of storm waters by proceeding independently of any other improvement, or may make such matter a part of any other improvement proceedings, and, in either event, pay the whole or any part of the cost thereof out of available funds, or may assess the whole or any part of the cost thereof according to the benefits arising therefrom and in the manner provided for apportioning assessments for general improvements. It shall be lawful for the County to assume and pay out of such available funds all or any part of the cost of acquiring any new land required for any improvement under the provisions of this chapter.

(c) Notwithstanding the provisions of subsection (a) above, the County shall not bear the costs of inspections requested to be made during any hour after the normal working hours of the County in any workday, or on a Saturday, Sunday or legal holiday.

(d) Land Exempt From Taxation.

(1) Whenever any public land, or any land by law exempted from assessments of the character provided for in this chapter forms part of any improvement district or fronts upon or is situated with relation to any special improvement or area to be so improved in a manner that the land would, if privately owned or not exempt from assessments be subject to assessment, the Council shall, nevertheless, without assessing public or exempted land for any part of the cost of improvement, by general ordinance appropriate and pay toward improvements out of general revenues the portion of the cost thereof which would otherwise be assessable against the same in lump sum, or, at the election of the Council, in equal installments with interest thereon as the Council shall determine.

(2) In the event, however, any part or parts of exempt lands as described in the preceding sentence,

except public lands, may be required for right-of-way or easement purposes within improvement districts the value thereof shall be chargeable to the improvement district, and upon acquisition the owner shall be compensated therefor in the following manner:

(A) Where the value of the part taken together with any severance damages exceeds the portion of the cost of the improvements which would otherwise be assessable against the exempt land, the County shall pay the difference to the owner or owners;

(B) Where the value is less than the portion of the cost of improvements which would otherwise be assessable against the exempt lands, the value of the land shall be deducted therefrom and the County shall pay the balance of the assessment as provided in this chapter.

(3) With respect to any proposed improvement where any part of the cost is thus to be borne by the County, the Council shall have the same right of approval or protest as though the County were the private owner of the public or exempted land so involved.

(4) As to such expenditure for public and exempt lands, the County shall be entitled to be reimbursed out of state revenues by appropriations to be made from time to time by the legislature to the extent of fifty percent (50%) of all assessments regularly apportioned against persons, corporations or entities, which are part of any improvement district or frontage improvement and are exempted by law from the payment of assessments.

(5) The County shall be entitled to be likewise reimbursed for the full amount of assessments regularly apportioned against public lands which are a part of any improvement district or frontage improvement, which public lands are owned in fee simple by the United States, or by the State, and which are not set aside for schools maintained by the County, or for County parks, or for other County purposes or for street areas or frontages, provided that in case any land exempted by law from assessments are provided in this chapter other than public land, or any part thereof, is sold or leased after the establishment of a frontage improvement or an improvement district, the grantee in the one case and the lessor in the other, shall assume the payment of assessments from the date of the sale or lease in the same manner as if the property had not been exempted from assessments and as if assessments apportionable against the property had been paid in installments to the date of sale or lease; and that all payments received from the grantee or lessor, as

the case may be, shall be paid into the permanent improvement fund.

(6) Nothing in this section shall be taken to prejudice any rights of the State to reimbursement from the United States for assessments assumed by the State, but the latter shall be subrogated to the rights of the County on the assessments so assumed. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-2.2. Costs Of Water System.

If the improvement includes the construction or improvement of a water system as aforesaid, the Board of Water Supply may, but such requirement is not mandatory, assume and pay out of its funds available for such purpose, the cost of engineering, incidentals and inspection, and not to exceed thirty-three and one-third percent of the total cost of the construction or improvement of such water system. (Ord. No. 156, January 24, 1982; Ord. No. 550, February 10, 1989.)

Sec. 24-2.3. Connection By Property Owners To Underground Public Utility Facilities.

(a) Whenever any public utility company has relocated its utility lines and related facilities underground as part of the improvements made under this chapter, any property owner or lessee whose property abuts the street in which such underground facilities are located, and who receives services from such public utility company by means of the overhead utility lines to be replaced thereby, shall provide underground lateral connection at said owner's or lessee's expense, which meets the standards of such public utility company, upon receipt of notice as hereinafter provided.

(b) Prior to or upon completion of the relocation of utility lines and related facilities, the County Engineer shall notify the owner or lessee of such abutting property to provide lateral connection to the underground facilities at said owner's or lessee's own expense. Such notice shall be by certified mail, addressed to the owner or lessee at the street address of such abutting property.

(c) Upon failure, neglect, or refusal of any owner or lessee so notified to commence work to provide the necessary lateral connection within thirty calendar days after notice has been given, or by the date specified in the notice, whichever is later, the County Engineer shall contract to provide for the necessary lateral connection and pay for such work with County funds. The County Engineer and authorized representatives, including any contractor with whom they contract hereunder, and assistants, employees, or agents of such contractor, are authorized to enter upon said property for the purpose of providing the necessary lateral connection described in

the notice. Before the County Engineer or authorized representative or contractor arrives, any property owner or lessee may provide the necessary lateral connection at his own expense.

(d) In the event the County has provided the necessary lateral connection, the owner of such property shall be billed for the cost thereof and the cost shall be a lien on the property. In the event the bill is not paid within thirty calendar days after the mailing date of such bill, the owner shall be liable for payment of penalty at a rate determined by the County.

(e) Any work performed by the County hereunder is deemed to be done pursuant to quasi-contract or construction contract between the County and the owner or lessee. Based on the foregoing contractual relationship, should the owner fail to pay the amount duly noted on the statement as provided herein, the County Attorney may proceed to file a mechanic's and materialman's lien pursuant to the provisions of Part II of Chapter 507, Hawaii Revised Statutes, or any other appropriate lien procedures. (Ord. No. 550, February 10, 1989)

Sec. 24-2.4. Connection By The County To Underground Public Utility Facilities.

(a) Whenever any public utility company has relocated its utility lines and related facilities underground in compliance with this chapter the County may, in lieu of the procedures prescribed in Section 24-2.3 include the installation of the underground lateral connections within private properties as part of an assessment area so as to assure the timely removal of utility poles.

(b) When the installation of the lateral connection is performed as part of an assessment area, the cost thereof shall be added to the property owner's share of the cost of assessments and if the property owner elects to pay said assessment in installments, it shall be payable in the same manner and at the same rate of interest as prescribed for the payment of assessments.

(c) In the case of connections to be made on public land, or any land by law exempted from assessments, the costs thereof shall be assumed and paid as provided under Section 24-2.1(d). (Ord. No. 550, February 10, 1989)

ARTICLE 3. PROCEDURE.

Sec. 24-3.1. Initial Procedure.

(a) The Council shall by resolution requiring not more than one reading for its adoption request the mayor to direct the County Engineer to investigate and report to the Council preliminary data concerning the highway or highways, sanitary sewer system, storm drainage system;

water system, sidewalk, bikeway, or street lighting system proposed to be opened, constructed or improved, the general character and extent of any improvement or improvements to be proposed, whether such improvement or improvements should be assessed on a frontage or an area basis, whether it will be necessary to acquire any new land, the estimated cost of acquiring any such land and the proportion of such cost which should be borne by the County, the materials recommended to meet the conditions of the improvement or improvements, the boundaries of the improvement district to be proposed and any subdistricts or zones therein as to which different portions of the cost should be charged, the estimated cost of the improvement or improvements, the portions of the cost to be borne by the County, and the portions of the cost to be specifically assessed against the land specially benefited with the estimated total amount of assessment to be made against each property according to the method of assessment proposed, and to prepare and furnish all necessary preliminary surveys, maps, plans, drawings and other data, details and specifications for the improvement or improvements and any other matters or details intended to apply thereto. The report, when so furnished and filed with the Council, shall not be acted upon until one week has elapsed from the date of the filing of the same.

(b) If the improvement, improvements or work proposed to be done includes the construction or improvement of a water system or the laying or installation of conduits, pipes, hydrants or any appliance for supplying or distributing a water supply, the County Engineer shall obtain from the Board of Water Supply preliminary plans and estimates for such proposed water system, and the County Engineer shall furnish the Board of Water Supply with such preliminary plans of the proposed improvement or improvements as will enable the Board of Water Supply to make its plans and estimates for the proposed water system. The County Engineer shall incorporate such preliminary plans and estimates of the Board of Water Supply in the report to the Council.

(c) Thereafter the Council may by resolution requiring one reading for its adoption propose the making of an improvement or improvements by specifying, expressly or by reference to data supplied by the County Engineer and theretofore filed with the Council, the streets, sanitary sewer system, storm drainage system, water system, sidewalk, bikeway, or street lighting system to be opened, constructed or improved; the area, owner, so far as known, and the general description and location of new land to be acquired, if any; the materials proposed to be used; the proposed method of assessment including the number of installment payments; the general boundaries of the district, subdistricts and zones to be assessed; and the estimated total amount of assessment against each property. The Council may adopt the plans and estimates furnished by the Board of Water Supply and incorporated in the report of the County Engineer, but may not

modify or change the same except with the consent of the Board of Water Supply. If no agreement can be reached, the water system, conduits, pipes, hydrants and other appurtenances for supplying and distributing water shall be omitted from such contemplated improvement or improvements. If the plans and estimates of the Board of Water Supply are adopted by the Council, such plans and estimates shall be referred to and incorporated by reference in such resolution. Such resolution shall refer to and incorporate by reference such surveys, plans, maps and other data reported by the County Engineer as shall be approved by the Council. The resolution shall also fix a date of public hearing upon the proposed improvement or improvements, which date shall be not less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the County.

(d) After the adoption of the resolution, the County Clerk shall cause a notice of the public hearing to be published twice a week for two successive weeks (four publications in all) in a newspaper of general circulation in the County, giving notice generally to all owners and lessees of land proposed to be assessed or acquired and to all others interested in the general details of the proposed improvement or improvements as adopted by the Council, either by express description or by reference to data supplied by the County Engineer and theretofore filed with the Council, and stating the time and place of the public hearing wherein such persons may object to and suggest modifications of the proposed improvement or improvements and may question the benefits of the proposed improvement or improvements to their property and the amount of any assessment thereon, and where the resolutions and reports and other data may be seen and examined prior to the hearing. Not less than ten days before the public hearing, a notice thereof, stating the time and place of the hearing, where persons may object to and suggest modifications of the proposed improvement or improvements and where pertinent data relating to the proposed improvement district may be obtained, shall be mailed to the several owners and lessees on record in the books and records of the Real Property Tax Division of the Department of Finance to their addresses on record at such department, by certified or registered mail with a request for a return receipt. Said notice shall contain a statement that the property described on said notice is proposed to be assessed to pay a portion of the costs of the proposed improvements. Affidavits of publication and mailing shall be filed with the Council at the hearing. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.2. Petition Of Owners.

(a) If the owners and lessees, as specified herein, of not less than sixty percent of the frontage of a public highway or public highways to be assessed or of not less than sixty percent of the area of land to be assessed in a proposed improvement district designated by such persons, shall file with the Council a petition, duly acknowledged by such owners and lessees, requesting the opening or improvement of a public highway or public highways in the proposed improvement district or for the construction or improvement of a storm drainage system, sanitary sewer system, sidewalk, bikeway, water system, or street lighting system, together with the surveys, maps, plans and other preliminary data and estimates mentioned in Section 24-3.1, the Council may reject or accept the petition, and, in the latter case, shall proceed thereon in the same manner as though the plan for such improvement or improvements had been initiated on its own motion, except as is otherwise provided in Section 24-1.1 as to the financing of improvements.

(1) The Council shall not make any change or modification of the plans, details or specifications for the proposed improvement or improvements without the written and duly acknowledged consent of the owners and lessees of not less than sixty percent of the frontage or area of the land to be assessed; except that the Council may delete or modify any part of the plans which contemplates payment by the County for such part of the proposed improvement or improvements.

(2) The cost of engineering, incidentals, inspection, surveys, maps, plans, specifications, other engineering data, land acquisition, publication of notices of hearing, mailing notices to owners and lessees, services of legal counsel, services of bond counsel, printing of bonds, bond discounts, preparation and printing of an official statement relating to the bonds, publication and distribution of notice of sale of bonds, execution and delivery of bonds, registrars' and paying agents' fees and expenses, other reimbursements to registrars and paying agents and publication and mailing of notices of redemption, rating agency fees, the cost of funding a debt service reserve fund for the payment of the principal of and interest on bonds (if permitted by law), premiums for municipal bond insurance to insure the timely payment of the principal of and interest on bonds and/or to insure in lieu of funding a debt service reserve for bonds and fees for letters of credit and other credit enhancements to secure the timely payment of the

principal of and interest on bonds, shall be included in the cost of the improvement or improvements.

(3) The term "lessee" as used in this chapter refers to a lessee of property to be assessed, who by the express terms of the lease must pay the kind of assessment contemplated by this chapter. Such lessee must join in the petition with the lessor unless the lessor files with the petition a duly acknowledged assumption of responsibility to pay the proposed assessments and release the lessee from payment or reimbursement to the lessor of such assessment.

(4) No sidewalks shall be constructed independently of any other improvements under any provision of this chapter, unless the highway along which the construction of such sidewalk is proposed shall have existing right-of-way width at least equal to the width, if indicated, in County standards.

(b) An improvement district under the provisions of this section may be initiated by the Council on its own motion as an alternative to initiation by petition of the owners and lessees as hereinabove provided. Under this alternative method the duly acknowledged written consent of such owners and lessees of not less than sixty percent of the frontage or area of land to be assessed shall be obtained before proceeding with the improvement or improvements.

(c) No such improvement or improvements shall be approved by the Council unless:

(1) The assessed valuation for real property tax purposes of the land to be improved is twice the estimated cost of the proposed improvement, or

(2) The Council by resolution finds the appraised value of the land in accordance with prevailing standards of appraisal then used by banks for loans thereon is twice the estimated cost of the proposed improvement and that the approval is in the public interest;

provided that the improvement or improvements may be approved by the Council upon the petitioners paying in cash or by certified check the difference in amount necessary to equal twice the land valuation under whichever land valuation method selected herein. The payment shall be applied against the total amount of cost of improvement or improvements. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.3. Petition By Owners Of One Hundred Percent Of Frontage Or Area.

If a duly acknowledged petition is filed by all the owners and lessees of one hundred percent of the frontage to be assessed upon any public highway or of one hundred percent of the area of land to be assessed, designated by such persons as a proposed improvement district,

requesting the type of improvements mentioned in Section 24-3.2, the Council shall proceed in the manner specified in such Section 24-3.2 and all the provisions therein shall be applicable; provided that "one hundred percent" shall be substituted wherever "sixty percent" appears, and that it will be unnecessary to give notice of the proposed improvements or call for a public hearing as provided in Section 24-3.1, and provided further that if all of such owners and lessees shall file a duly acknowledged written consent to the amount and apportionment of the proposed assessments, it shall be unnecessary to give the notice or to hold the hearing specified by Section 24-3.8 and the Council may immediately proceed to fix the assessments in the manner provided by Section 24-4.1.

Any of the provisions of this Ordinance may be waived in writing by the owner of all property in the District which is to be assessed, and by the Mayor if the County is to bear any of the costs of the improvements. Such a waiver must state the requirements of this Ordinance which are being waived. No person shall be permitted to withdraw a written waiver once it has been submitted to the County Council for consideration. The authorization for such a waiver shall be contained within the ordinance establishing the District. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.4. Determination By Council.

(a) Protests, Objections And Suggestions. Any owner of property proposed to be assessed may at any time prior to or at the public hearing file in writing, with the Council, any protest, objection or suggestions as to the proposed improvement, stating briefly his reason therefor, or present the same in person orally, at the public hearing. If fifty-five percent (55%) of the property owners of the total frontage or area to be assessed for improvements, at the hearing or prior thereto, file with the Council written protests, duly acknowledged by the owners, against the making of the improvements or against any part of the plan therefor, the improvements shall not be made contrary to the protest.

(1) If the protest is against the making of any improvement, the improvement shall not be made, and the proceedings shall not be renewed within six (6) months from the date of closing the public hearing, unless each and every owner protesting withdraws his protest.

(2) Any lessee of any property to be assessed under this chapter, who by the express terms of his lease must pay the kind of assessments contemplated by this part shall be subrogated to all the rights of the owner to protest by filing with the Council prior to or at the hearing a certified copy of his lease, together with a citation of the book and page of the

public record of the same if it is recorded, provided that any lessor of a lessee, or any owner of the property to be assessed, may, at any time before the closing of the public hearing, make void the protest or the rights of protest of any lessee of the property on consideration of filing with the Council a duly acknowledged waiver of the stipulation in the lease which required the lessee to pay the special assessment, and a written undertaking by the lessor or owner to pay the special assessment to be made under the proposed improvement.

(b) After the hearing provided in Section 24-3.1, the Council shall determine whether or not the proposed improvement or improvements shall be made and whether with or without modification. No modification shall be made without public hearing as provided for in Section 24-3.1 which would substantially reduce the frontage or area to be assessed or increase the proposed assessment beyond ten percent of the estimated total amount of assessment against all properties as specified in the resolution proposing the making of the improvement or improvements, or materially alter the general character or plan of improvement or improvements advertised, except that one or more areas of an independent sanitary sewer improvement district embracing two or more separate areas may be deleted without the aforesaid hearing. No modification in the plans or estimates furnished by the Board of Water Supply shall be made without its consent.

(1) If, after such initial or further hearing, the Council determines to proceed with the improvement or improvements, it shall by resolution requiring not more than one reading for its adoption create, define and establish the improvement district, define the extent and describe the general details of the proposed improvement or improvements, describe each parcel of land to be acquired, declare the part or portion of the cost of improvement or improvements to be borne by the County, declare the method of assessment, determine the extent of frontage area of land to be assessed and that such property to be assessed is specially benefited, describe the materials to be used, and request the Mayor to direct the County Engineer to prepare a map of the improvement district showing the exact location of the proposed improvement or improvements together with final details, plans and specifications for the work in a form to call for and encourage competitive bidding, wherever feasible. The description and definition herein required may be set forth expressly in such resolution or be incorporated therein by referring to the data of the County Engineer theretofore filed with the Council.

(2) If the proposed improvement or improvements include the construction or improvement of a water system, the resolution shall request the Board of Water Supply to furnish final details, plans and specifications for adequate and appropriate conduits, pipes, hydrants and other appurtenances including reservoir and booster pumps for such water system and shall also request the Mayor to direct the County Engineer to furnish the Board of Water Supply with such copies of final surveys, maps and plans of the proposed improvement or improvements necessary for the preparation of the final plans and specifications for such water system. The Board of Water Supply need not furnish such plans and specifications where the County has not appropriated its share of the cost.

(3) In submitting the report as required by the resolution, the data may expressly be set forth in the report or may be incorporated therein by referring to the data theretofore filed with the Council by the County Engineer and the Board of Water Supply. The map of the improvement district showing the exact location of the proposed improvement or improvements, and the final details, plans and specifications of the County Engineer and the Board of Water Supply shall be incorporated by reference in a resolution to be used as the basis for the calling for bids and awarding of contract.

(c) In case the improvement or improvements so determined upon require the acquisition of any new land therefor, the Council shall acquire the same before final award of the contract, either by deed, or other voluntary conveyance from the owners thereof, or it may, at its option, and in the name of the County cause condemnation proceedings to be brought to acquire the same in like manner as by law provided or in like proceedings when brought by the State, and after the filing of the petition in such proceedings the final award of the contract may be made. If the cost of acquiring such land exceeds the estimate therefor, the Council may provide for the excess cost by general appropriation.

(d) In the event that land has been acquired by condemnation under the provisions of Chapter 101, Hawaii Revised Statutes, and in the award made on the condemnation there has been deducted from the compensation or damages otherwise payable to the landowners any amount by reason of the fact that land of such landowner not sought to be condemned would be benefited by the construction of an improvement or improvements proposed to be made after the condemnation, it shall be unlawful to make any assessments against such land under this chapter without having first credited against the amount for which the land would otherwise have been assessed the amount

that has been deducted in the award made on condemnation for benefits by reason of the construction of an improvement or improvements proposed to be made after condemnation. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.5. Compliance With General Plan And Development Plan Of The County.

Notwithstanding any provisions of this chapter to the contrary, the actual construction of any improvement under this chapter shall not be commenced unless the improvement shall conform to, or shall not be inconsistent with, the General Plan and Development Plan of the County.

Any improvement district project involving the construction or improvement of any street shall include the construction or improvement:

(1) Of any portion of a general planned or development planned street, which is situated within the proposed improvement district and which will connect two or more streets, existing or to be constructed under the proposed improvement district, situated within such improvement district; and

(2) Of any general planned or development planned dead end street which is situated wholly within the proposed improvement district. (Ord. No. 550, February 10, 1989)

Sec. 24-3.6. Contract, Bids, Contractor's Bonds.

(a) All improvements made under the provisions of this chapter shall be constructed under contract let to the lowest responsible and reliable bidder therefor, after public advertisement by the Council in a newspaper of general circulation published in the County three times in one week.

(1) The Council may either let the work as an entire contract, or in its discretion, make one or more contracts separately for the different kinds of work to be performed, or for the improvement of different highways or parts of highways, to be improved under one proceeding.

(2) Pursuant to Section 103-28 and Section 103-30, Hawaii Revised Statutes, all bids shall be accompanied by a deposit of legal tender or by a certificate of deposit or certified check, on a bank doing business within the State or a sufficient surety bond payable to and in favor of the County for or in the sum equal to five percent of the amount bid; provided, that when the bid exceeds $50,000, the aforesaid deposit, certificate, check, or bond shall be for $2,500 plus two percent of the amount in excess of $50,000, which shall be forfeited to the County unless the successful bidder signs the

contract and furnishes an approved bond within the time specified by the Council.

(3) No contract shall be made without a bond to the County, for the faithful performance of such contract, in an amount not less than fifty percent of the contract price, with at least two sufficient sureties, each of whom shall be worth not less than the full amount of the bond over and above all property exempt from execution, and who shall, upon the written demand of the Councilmembers or of any owner of property subject to assessment, be required to justify thereon on an examination under oath before the Council; provided that instead of personal sureties, a duly qualified surety company may be substituted as provided by law. If upon such examination any surety is held insufficient, a new bond with sufficient sureties shall be filed by the successful bidder within the time specified and allowed by the Council, or the contract to him and the deposit shall be forfeited.

(4) Upon the contract being signed and a sufficient bond furnished as aforesaid, the deposit made with the bid shall be returned to the contractor.

(5) Any other method of letting contracts shall be illegal and void.

(b) The Council may, any other provision of the law to the contrary notwithstanding, let the contract without having the total amount of the contract price available, and if the completion of the contract will extend beyond the fiscal year in which the same is executed it may be let without the Council appropriating the total amount the County is obliged to pay towards the contract price. In the latter event, however, the County must have available and appropriated at the time of letting the contract, if the same is to be completed during the next succeeding fiscal year, at least fifty percent or if the same by its terms is not to be completed until beyond the next succeeding fiscal year at least thirty-three and one-third percent of the amount the County is obliged to pay toward the contract price and the balance shall in the first event be a first charge on the revenues of the County for the next succeeding fiscal year, and in the latter event to be a first charge on the revenues of each of the next two succeeding fiscal years in the amount that the same will be required during such fiscal years, but in an amount of not less than fifty percent of the balance at the beginning of the first succeeding fiscal year and the remainder at the beginning of the second succeeding fiscal year. Pursuant to the Charter, the contract shall not be legal unless, before it is let, the Council by ordinance provides for the automatic appropriation at the beginning of the next succeeding fiscal years of the amounts herein

made a first charge on the revenues of the County for such fiscal year and the Director of Finance of the County shall make the appropriations in the books as by the ordinance provided.

(c) The lowest responsible bidder may be awarded a conditional contract subject to public hearings, equalization hearings, and the assessment ordinance being adopted.

(d) Notwithstanding any other provision to the contrary, the Council may request the Mayor to direct the County Engineer and Finance Department to let the contract pursuant to the procedures specified in Section 24-3.6. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.7. Inspection And Use Of Improvements.

(a) Water System. If an improvement or work includes the construction or improvement of a water system as aforesaid, the Board of Water Supply shall maintain an inspector over the work to see that the plans and specifications which it has furnished have been complied with. After the work has been completed and accepted, the water system, pipes, conduits, hydrants and other appurtenances for supplying or distributing water so installed shall constitute a part of the system of the Board of Water Supply and shall at all times thereafter be used, operated and maintained by it as a part of its system.

(b) The County may maintain an inspector over the work to see that the plans and specifications have been complied with, and such inspection costs shall be borne as provided by Section 24-2.1 et. seq. After the work has been accepted by the County, the public facilities shall be a part of the County system, and shall at all times thereafter be used, operated, and maintained by the County as part of its system. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-3.8. Notice Of Improvement Authorized.

(a) After the bid of the lowest responsible and reliable bidder has been received for the construction of the improvements, and it has been determined by the County Engineer that the total amount of assessments against all properties within the improvement district, based on the bid, will not exceed beyond ten percent of the estimated total amount of assessments of all such properties as specified in the resolution proposing the making of the improvement or improvements, another such public hearing will not be required and the County Engineer shall thereupon proceed to prepare an assessment map similar to that required under Section 24-3.1 and an assessment roll and description of properties to be assessed showing in detail the proportionate amount per front foot and the

exterior boundaries of the lands subject to the assessment, if the assessment is to be made on such basis, or the rate per square foot and the area of the lands subject to the assessment, if the assessment is to be made according to area, proposed to be assessed against the property in the benefited district or in the several subdistricts or zones thereof, if any, and a list of all owners and lessees on record in the books and records of the Real Property Tax Division of the Department of Finance of the land fronting upon such highway or highways or situated within the improvement district.

(b) The Council shall thereupon by advertisement and mailing in the same manner as that provided in Section 24-3.1 give notice of the total amount of the cost of the improvement or improvements based upon the bid of the lowest responsible and reliable bidder, the share per front foot or per square foot, as the case may be, proposed to be charged to the benefited district or subdistricts or zones, if any, and the assessment map, assessment roll and description of properties being available for examination at the office of the County Engineer during business hours at any time prior to and including the date fixed for hearing.

(c) The notice shall also fix a date and place when a public hearing will be had and the Council will sit as a board of equalization to receive complaints or objections respecting the total amounts of the proposed several assessments, which date shall not be less than ten days nor more than three weeks after the date of the first newspaper publication of the notice.

(d) The Council may, any other provision of the law to the contrary notwithstanding, give notice and hold the assessment hearing as aforesaid prior to advertising for bids on any project in which the total assessment is based on a rate fixed by Section 24-1.2. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

ARTICLE 4. ASSESSMENTS

Sec. 24-4.1. Assessments Fixed By Ordinance.

After the hearing, the Council shall forthwith proceed to make such modifications or changes as to it may seem equitable or just, or shall confirm the first proposed assessment, and upon reaching a final decision shall, by ordinance, fix the portions of the cost to be assessed against the benefited properties and against the owners thereof respectively, which ordinance shall incorporate by reference the assessment roll as approved by the Council. After the final enactment of such ordinance the amounts of the several assessments so listed, advertised and incorporated and not previously objected to shall be conclusively presumed to be just and

equitable and not in excess of the special benefits accruing or to accrue by reason of the improvement to the specific property assessed. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.2 Notice And Collection Of Assessments.

The Director of Finance shall notify the several owners and lessees, on record in the books and records of the Real Property Tax Division of the Department of Finance by either certified or registered mail addressed to their addresses on record at such department, with a request for a return receipt, of the several amounts assessed on the respective properties and of the date when such assessments are payable; provided, however, that failure of any owner or lessee to receive any such notice shall not invalidate the assessment or entitle the owner or lessee to an extension of time within which to pay the assessment. The Director of Finance shall also collect such assessment and set aside all moneys so collected in an appropriate fund or funds. (Ord. No. 156, January 24, 1982; Ord. No. 550, February 10, 1989)

Sec. 24-4.3. Assessments, Payable When.

All assessments so made shall be due and payable within thirty days after the date of the last publication of the ordinance; provided that any assessment may, at the election of the owner of the land assessed, be paid in installments with interest, as hereinafter provided. Failure to pay the whole of any assessment within the period of thirty days shall be conclusively considered and held an election on the part of all persons interested in such assessments, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively considered and held to have consented to the improvement and such election shall be conclusively held and considered as a waiver of any and all right to question all power or jurisdiction of the County to make the improvement, the regularity or the sufficiency of the proceedings or the validity or correctness of the assessment; provided, however, that such waiver shall not apply to any person who has properly filed an action in court, challenging the power or jurisdiction of the County to make the improvement, within thirty days after the passage of the ordinance fixing the assessments. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.4. Lien; New Assessment.

(a) All assessments made pursuant to this chapter shall be a lien until paid against each lot or parcel of land assessed from the date of the first publication of the ordinance declaring the assessment and shall have

priority over all other liens except the lien of real property taxes.

(b) In the event that a lot previously assessed is subsequently subdivided or subsequently consolidated with any other lot, whether or not the latter is within the improvement district, the Council, upon petition by the owners of such lots as may be subdivided or consolidated, or upon petition by the lessees of such lots as may be subdivided or consolidated who by the express terms of their leases are obligated to pay the kind of assessments covered by this chapter, may prorate the original assessment among the lots resultant from the subdivision, or consolidate the assessments upon the component lots and assess the consolidated lot therefor, by an appropriate amendment to the assessment ordinance; provided that prior to the introduction of the amendment to the assessment ordinance, the subdivider or consolidators shall deposit with the County legal tender or a certified check in a sufficient amount to be used to cover the cost of making such allocation and to cover the assessment allocable to areas used or to be used for purposes that are public in nature, such as, but not limited to, roadways, parks, school sites, sewage treatment plant sites and reservoir sites, developed in connection with the subdivision or consolidation. The cost of making the reallocation of assessments, when determined by the County Engineer and approved by the Council shall be paid into the general fund of the County. The amount of assessment, allocable to areas used or to be used for purposes that are public in nature and developed in connection with the subdivision or consolidation, as recommended by the County Engineer and approved by the Council, shall be credited to the appropriate fund. The amended assessments shall be a lien upon the subdivided or consolidated lots as of the effective date of the amended ordinance. Such assessment shall be paid in installments equal in number to that remaining under the original assessment and at the same rates of assessments and interest.

(c) No delay, mistake, error, defect or irregularity in any act or proceeding authorized by this chapter shall prejudice or invalidate any assessment; but the same may be remedied by subsequent or amended acts or proceedings and, when so remedied, the same shall take effect as of the date of the original act or proceeding. If in any court of competent jurisdiction any assessment made under this chapter is set aside for irregularity in the proceedings, the Council may, upon notice as required in making an original assessment, make a new assessment in accordance with the provisions of this chapter.

(d) Upon completion of the improvement or improvements and the payment of the cost thereof, the County Engineer shall certify to the Council the actual cost of such improvement or improvements together with the

amount of the assessments therefor. If the aggregate of the assessments for an improvement or improvements made pursuant to either Section 24-3.2 or Section 24-3.3 exceeds the actual cost of the improvement or improvements by more than $5,000, the Council by amendment of the assessment ordinance may direct the Director of Finance to ratably refund or credit the amount in excess of $5,000, provided that no refund or credit shall be made if the cost of effecting such refund or credit exceeds the amount of refund or credit available. If the assessment has been paid in full, then the refund of such excess shall be made to the owners of the property at the time of the refund. If the assessment is still outstanding, then the refund shall be applied to reduce the unpaid principal of the assessment outstanding. If any amount of such excess cannot be applied as refund, then such excess shall be credited to the improvement district revolving fund of the County. In any case, any amount of excess up to $5,000 or less shall be retained by the Director of Finance to defray the cost of effecting any refund or credit and all other costs of administering the improvement district from which such amount is generated; provided, that any amount in excess of $5,000 shall be ratably distributed subject, however, to the limitation relative to the cost of distribution as stated hereinbefore. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.5. Payment Of Installments.

(a) In case of an election to pay any assessment in installments, the assessment shall be payable in not less than five nor more than twenty annual installments; provided that in an improvement or improvements made pursuant to Section 24-3.1, with respect to which the required amount for the contract price and other costs involved is obtained through the sale of general obligation bonds or from the special assessment revolving fund or both pursuant to Section 24-5.1(b), the assessments may be made payable in not more than two hundred forty monthly installments. Interest shall be paid on the unpaid principal at a rate not exceeding fifteen percent per annum. The number of such installments and period of payment and the rate of interest shall be as determined by the Council.

(b) The owner of any land assessed may at any time after the expiration of the first thirty-day period pay the entire unpaid principal of assessment, or any portion of the unpaid principal, together with interest on the amount so paid to the date for the payment of the next subsequent installment, and such owner shall no longer be liable for the interest which would otherwise have accrued after such date on the amount of principal so prepaid. Any prepayment of the unpaid principal of an assessment shall be applied to reduce the unpaid principal of the

assessment outstanding; shall be credited against the outstanding principal installments in inverse chronological order; and shall not relieve the owner of the land assessed from the payment of the amount of the installment of principal and interest next due. (Ord. No. 156, January 24, 1972; Ord. No. 550; February 10, 1989)

Sec. 24-4.6. Payment In Bonds.

The Director of Finance may accept in lieu of cash in payment of any assessment, installment thereof, interest, penalty, cost, expense or any portion thereof, bonds of the improvement district in which the land is situated, such bonds to be valued to an amount equal to one hundred percent of the principal amount of such bonds, plus accrued interest on such bonds to the date of acceptance of such bonds by the Director of Finance. Upon the receipt of such bonds, the Director of Finance shall forward the same to the registrar for such bonds for cancellation. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.7. Effect Of Failure To Pay Installment.

Failure to pay any installment or any part of an installment, whether of principal or interest or both, when due, shall cause the whole of the unpaid principal to become due and payable immediately, and the delinquent installment or installments or any delinquent part or parts thereof, whether of principal or interest or both, shall thereafter bear penalty at the rate of two percent per month or fraction of a month from the date of delinquency until the date of sale as hereinafter provided; but at any time prior to the date of sale the owner may pay the entire amount of the delinquent installment or installments or delinquent part or parts, whether of principal or interest or both, with penalty, and all costs and expenses accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.8. Owner Of Undivided Interest.

The owner of any undivided interest in any land may pay the whole assessment and may have a joint or several right of action against the other owners of any interest in such land for their proportionate share of the assessment. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.9. Sale In Case Of Default.

In case of default in the payment when due of the principal of and interest on any installment of any

assessment, the Director of Finance shall advertise and sell the property concerning which default is made for the whole of the unpaid principal amount of the assessment thereon, interest and costs. Such sale and advertisement shall be made by the Director of Finance in the same manner, under the same conditions and penalties and with the same effect as provided by general law for sales of real property for default in payment of property taxes. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.10. Purchase At Sale.

At any sale for default in payment of any assessment as aforesaid, the Director of Finance may accept, in lieu of cash, in payment for the land so sold, bonds of such improvement district, such bonds to be valued at an amount equal to one hundred percent of the principal amount of such bonds, plus accrued interest on such bonds to date of sale. Upon the receipt of such bonds the Director of Finance shall forward the same to the registrar for such bonds for cancellation and credit the improvement district with the amount allowed on the bonds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.11. Certificate By Director Of Finance.

The Director of Finance shall on request give a certificate in writing to any person making request for same, showing in the certificate the balance due on any individual assessment for improvements for principal, with the date of next installment payment, the number of the installment payment and the amount to be due for the installment payment and particulars of interest and penalty on the next installment date to be due and owing. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-4.12. Sale Of Land Bid In By Director Of Finance At Sale.

Whenever any land has been bid in by the Director of Finance at any sale for default of the owner thereof, the Director of Finance in making such sale thereof as may by law be authorized, may sell the same upon the following terms and conditions:

(1) A down payment at the sale of twenty percent of the sale price;

(2) The balance payable in monthly installments of not less than one and one-third percent of the total sale price, plus interest at the prevailing rate established by the Council for payment of the unpaid balance of the property owner's share of the cost of assessments within an improvement created and established under Section 24-3.1;

(3) Failure for thirty days to pay any installment due shall effect an entire forfeiture of the purchaser's right, title and interest in such land and in any payments previously made by him on account thereof;

(4) Such building restrictions as the Director of Finance may prescribe; and

(5) Such land when sold shall be subject to real property taxes. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

ARTICLE 5. FINANCING

Sec. 24-5.1. Improvement District Bonds, General Obligation Bonds And Special Assessment Revolving Fund, And Advances From Available Funds.

(a) Improvement District Bonds.

(1) In the event of an election to pay all or any part of any such special assessment in installments, the unpaid amount of such special assessment required to pay the contract price of the related improvement and any other cost involved in the undertaking of the improvement, including without limitation the cost of land acquisition and the costs specified in Sections 24-2. 1(a) and 24-3.2(a) and the cost of funding a debt service reserve fund for the payment of the principal of and interest on improvement district bonds (if permitted by law), shall be obtained by the issuance of sufficient improvement district bonds of the County to raise such required amount; provided that if the aggregate of the assessment installments for all property owners in the improvement district is less than $1,000 in each year, then improvement district bonds need not be issued.

(2) The improvement district bonds shall be authorized by resolution of the Council and issued pursuant to and under the authority and requirements of the Council.

(A) Notwithstanding any other ordinance to the contrary, the improvement district bonds shall be in such form, either coupon or registered, shall bear the name of the benefited improvement district, shall be dated, shall be numbered, shall be of the denomination or denominations, shall bear interest at such rate or rates per annum, but not more than fifteen percent per annum, payable at such time or times and at such place or places, shall mature at such time or times so as to cover the outstanding installment payments determined upon

pursuant to the provisions of this chapter, shall be subject to call at such price or prices and upon such terms and conditions, and may be subject to tender by the holders thereof upon such terms and conditions, all as determined by resolution by the Council.

(B) The improvement district bonds shall bear the lithographed or engraved facsimile signature of the Director of Finance of the County and shall be sealed with the seal of the County, or a lithographed or engraved facsimile thereof, attested by the lithographed or engraved facsimile of the signature of the Mayor of the County and shall bear a certificate of the authentication manually executed by the registrar for the improvement district bonds. No improvement district bond shall be valid or obligatory unless authenticated by the registrar.

(C) Interest coupons, if any, shall bear a lithographed or engraved facsimile of the signature of the Director of Finance of the County.

(D) The Director of Finance of the County shall designate the registrar, if any, for the improvement district bonds and the place or places of registration and transfer of such improvement district bonds, and such registrar shall maintain such books of registry as shall be required by the resolution of the Council.

(3) The improvement district bonds shall be payable only out of the moneys collected on account of assessments made for the improvement or improvements for which they are issued and the County shall not otherwise guarantee payment of such bonds; provided, that interest payments may be advanced by the Director of Finance out of moneys available in the improvement district revolving fund.

(b) General Obligation Bonds and Special Assessment Revolving Fund.

(1) For an improvement or improvements initiated pursuant to Section 24-3.1 only, including without limitation the costs specified in Section 24-2.1(a) and the cost of funding a debt service reserve fund for the payment of the principal of and interest on general obligation bonds (if permitted by law), the Council, in lieu of the issuance of improvement district bonds as permitted by subsection (a) above, may in its sole discretion issue general obligation bonds of the County or authorize payment of the required amount from the special assessment revolving fund of the County or both. The Council shall have power to issue general obligation bonds of

the County for the purpose of establishing, maintaining or replenishing the special assessment revolving fund. All such general obligation bonds shall be authorized, issued and sold under, pursuant to and in accordance with Chapter 47, Hawaii Revised Statutes, as amended, all of the provisions of which chapter shall be applicable thereto. Without limiting the generality of the provisions of the foregoing sentence, the form, name, date, denomination, numbers, maximum interest rate, method of execution and all other details of such general obligation bonds shall be fixed and determined in accordance with and as provided by such chapter, and no right of prior redemption need be reserved in the issuance of such bonds, nor shall either the amounts, or dates, of the maturities of any such bonds be required to conform in any way to the amounts and due dates of any assessments, and the validity of such general obligation bonds shall not be dependent on or affected in any way by any proceedings taken or any contracts made, acts performed or done in connection with, or in furtherance of, any improvement or improvements or any assessments for such improvement or improvements.

(2) In the event of the issuance of general obligation bonds as provided in this subsection (b), all moneys collected on account of assessments and interest for any improvement to finance which such bonds have been issued, may, after the issuance of such bonds and if and to the extent so directed by the Council, be applied to the reimbursement of the general fund of the County to the extent of the amounts paid for interest on and principal of such general obligation bonds. Any amounts collected on account of assessments and interest as aforesaid to the extent not so directed by the Council to be applied to such reimbursement or in excess of the amounts required for such reimbursement, and amounts collected on account of assessments and interest for any improvement financed from the special assessment revolving fund, shall be appropriated to and become a part of the special assessment revolving fund and may be used and applied in the manner and for the purposes as are all other moneys deposited in that fund.

(3) The provisions of Section 24-5.2(a) and Sections 24-5.3, 24-5.4, 24-5.5, 24-5.6 and 24-5.7 of this chapter shall not apply to such general obligation bonds and shall be restricted in their application to improvement district bonds, nor shall the provisions of Article 6 of this chapter apply to such general obligation bonds unless the Council in its sole discretion shall consent to the application

of such provisions to such bonds, and the refunding of any such general obligation bonds shall not in any way affect the payment of assessment installments and the interest thereon or the amounts and times of such payments unless such refunding is part of a plan consented to by the Council and adopted under Article 6 hereof.

(c) Advances from Available Funds. In the event of an election to pay all or any part of any such special assessment in installments, the amount required for immediate use during the period prior to the issuance of improvement district or general obligation bonds or the provision of funds from the special assessment revolving fund, to pay the contract price of the improvement or the installments thereof from time to time as they fall due may be advanced out of any available funds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-5.2. Special Funds For Payment Of Improvement District Bonds.

(a) Other Expenses.

(1) All moneys collected on account of assessments and interest for any improvement or improvements after the issuance of any improvement district bonds, if any, for such improvement or improvements shall be kept by the Director of Finance in a special fund and applied solely to the payment of interest and principal of such improvement district bonds until such bonds have been paid.

(2) In the event that general obligation bonds shall be issued pursuant to Section 24-5.1(b) to pay the cost of any improvement or improvements or any surplus remains in such special fund after the payment of improvement district bonds chargeable against such fund or any premium shall be received on the sale of such improvement district bonds, all such moneys collected on account of assessments and interest for any improvement or improvements or any such surplus or premium shall be credited to and become a part of a fund to be known as the "improvement district revolving fund." Moneys in the improvement district revolving fund shall be available to cover deficiencies in interest realized on account of diminishing balances of installments outstanding, to advance interest due on improvement district bonds outstanding prior to collection of annual assessments, to reimburse the general fund for principal and interest on general obligation bonds issued for assessable public improvements or issued to establish, maintain or replenish the special assessment revolving fund in the event the payment of assessments are late or insufficient, to reimburse

the general fund for administrative cost and expenses relating to improvement district bonds, to pay all expenses in connection with the sale of delinquent improvement district lots, and to pay the prices of such delinquent lots as are bid for and purchased for the County by the Director of Finance, and the Director of Finance is authorized upon such purchase to transfer the proper amounts so bid to the proper special funds for the respective improvement district concerned.

(b) Advances for certain improvements, assessment, payments and land acquisition. Upon recommendation of the Director of Finance, the Council may by resolution authorize the Director of Finance to advance moneys in the improvement district revolving fund for unpaid assessments for any improvement or improvements in lieu of the issuance of bonds where the aggregate of the assessment installments for all property owners in the improvement district is less than $1,000 for each year, for any unpaid amount of the first installment of the assessments where elections have been made to pay the assessments in installments and for any payment in connection with any improvement or improvements for which the issuance and sale of improvement district bonds or general obligations bond or disbursement from the special assessment revolving fund have been duly authorized. After adoption by the Council of the resolution creating, defining and establishing an improvement district pursuant to Section 24-3.4, the Council, upon recommendation of the Director of Finance, may by resolution authorize the Director of Finance to advance moneys in the improvement district revolving fund for the cost of land acquisition for improvements pursuant to Section 24-3.2. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-5.3. Payment Of Principal, Premium And Interest On Improvement District Bonds.

The principal of and premium, if any, and interest on the improvement district bonds shall be payable at such place or places as may be determined by resolution of the Council, and, in the case of interest, may be payable by check or draft mailed by the paying agent or paying agents for the bonds to the registered owners thereof. In all cases the improvement district bonds and coupons, if any, shall recite the places of payment. In case any improvement district bonds are made payable elsewhere than in the County, the Director of Finance shall remit the funds necessary to pay the interest and principal and premium thereon when due of any such improvement district bonds, with exchange, to the institution so designated, first assuring himself that such institution is then solvent. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-5.4. Sale of Improvement District Bonds And Use Of Improvement District Bond Proceed.

(a) Improvement district bonds may be sold at public or private sale, and for a price or prices as may be determined by resolution of the Council to be in the best interest of the County.

(b) If the improvement district bonds are to be sold at public sale, the Director of Finance shall publish and distribute a notice of sale of such improvement district bonds, for the par value thereof on an all-or-nothing basis, in accordance with the provisions hereof and the resolution authorizing the issuance and sale of bonds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-5.5. Improvement District Bonds Not Chargeable Against General Revenues.

(a) No improvement district bonds issued under the provisions of this chapter shall be considered to be general obligation bonds of the County for purposes of and within the meaning of Chapter 47, Hawaii Revised Statutes, as amended, nor shall the payment of the same be a charge against the general revenues of the County.

(b) Any improvement district bonds issued under the provisions of this chapter shall be special obligations of the County and shall be payable solely from the moneys received by the County from the assessments made hereunder, the moneys attributable to the proceeds of the improvement district bonds, and the income derived from the temporary investment thereof, and from the other sources specified in this chapter, and shall not be payable from any other fund or source. The improvement district bonds shall not constitute a general or moral obligation of the County and the full faith and credit of the County shall not be pledged to the payment of the principal of and premium, if any, and interest on the improvement district bonds. The improvement district bonds shall not be secured directly or indirectly by the general credit of the County or by any moneys of the County other than the moneys specified in this chapter. No owner of any improvement district bond issued under the provisions of this chapter shall have the right to compel any exercise of the taxing power of such County to pay debt service on the improvement district bond. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

ARTICLE 6. REFUNDING

Sec. 24-6.1. Refunding Authorized.

The Council may provide for the refunding of the outstanding indebtedness of improvement districts located

within the County in the manner hereinafter provided. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.2. Initiation Of Refunding.

(a) Initiation by Owners.

(1) Subject to the provisions of subsection (b) of Section 24-5.1, the owners or lessees of real property as herein specified in any improvement district whose property represents seventy-five percent or more of the outstanding improvement assessments at the time of the filing of the petition, shall, if it is desired that the indebtedness of the district be refunded, file with the Council a petition, which petition shall set forth the indebtedness of the district, that it is desired that the indebtedness be refunded, and the proposed method of refunding the outstanding indebtedness. The Council shall thereupon by resolution requiring not more than one reading for its adoption, request the Mayor to direct the County Engineer to investigate and report to the Council the amount of unpaid assessments and the property subject to the same in the improvement district, the detail of any delinquent assessments and of any unpaid penalties, whether the petitioners own real estate representing seventy-five percent or more of the unpaid assessments in the district, the proposed method of reassessment of the lands subject to existing assessments, a new assessment roll showing the proposed new assessments, the cost of the proposed refunding and other details which may be necessary to carry into effect the proposed refunding. Such report of the County Engineer shall be filed with the Council. Within seven days after the filing of the County Engineer's report the petitioners shall deposit with the Director of Finance a sum sufficient to meet the cost of preparing the proposed refunding plan.

(2) Thereafter, the Council shall by resolution requiring not more than one reading for its adoption, propose the adoption of the suggested refunding plan specifying the outstanding indebtedness of the district, that the owners and lessees of land representing not less than seventy-five percent of the unpaid improvement assessments have petitioned that the outstanding indebtedness of the district be refunded, the proposed refunding plan in detail, and the proposed method of reassessment, including the number of installment payments to be proposed, and the amount of assessment which may include all costs of refunding. The resolution shall refer to and incorporate by reference the assessment roll and such

other data reported by the County Engineer as shall be approved by the Council. The resolution shall also fix the date of public hearing upon such plan, which date shall not be less than fifteen days after the first publication of notice thereof in a newspaper of general circulation in the County. After the adoption of the resolution, the County Clerk shall cause a notice, stating the time and place of the public hearing and where the resolution, assessment roll and other data may be seen and examined prior to the hearing, to be published and mailed as provided for in Section 24-3.1. Affidavits of publication and mailing shall be filed with the Council at the hearing.

(b) The refunding of improvement district bonds under this Article 6 may be initiated by the Council on its own motion as an alternative to initiation by petition of the owners and lessees as hereinabove provided and without obtaining the prior approval of such owners and lessees. Notwithstanding that a proposed refunding of improvement district bonds is initiated by the Council on its own motion, the report of the County Engineer required by subsection (a)(1) hereof shall be prepared, and the public hearing required by subsection (a)(2) hereof shall be held, in accordance with the provisions of such subsection (a) hereof. In the event a proposed refunding is initiated by the Council on its own motion pursuant to this subsection (b), the new assessments approved by the Council pursuant to Section 24-6.4 hereof shall not be greater in any year than the assessments for such year in effect prior to the approval of such new assessments. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.3. Protest Against Refunding.

Any owner of property, the assessments on which to pay the outstanding indebtedness have not been fully discharged, may, at any time prior to or at the public hearing, file in writing with the Council any protest, objection or suggestion as to the proposed refunding measure, stating briefly the reason therefor, or may present the same in person orally at the public hearing. If the owners of real property representing thirty percent or more of the outstanding improvement assessments at the hearing, or prior thereto, file with the Council written protests duly acknowledged by such owners against the proposed refunding project, or against any part of the plan therefor, the same shall not be made contrary to such protest. If the protest is against the adoption of any refunding plan, the same shall not be made, and the proceedings shall not be renewed within one year from the date of closing the public hearing, unless each owner protesting shall sooner withdraw his protest. Any lessee

of any property to be assessed under this chapter who by the express terms of his lease must pay the kind of assessments contemplated by this chapter, shall be subrogated to all the rights of such owner to protest by filing with the Council prior to or at the hearing a certified copy of his lease, together with a citation of the book and page of the public record of the same if it be recorded, provided, that any lessor of such lessee, or any owner of property to be assessed, may, at any time before the closing of the public hearing, make void the protest or the right of protest of any lessee of the property on consideration of filing with the Council a duly acknowledged waiver of the stipulation in the lease which requires the lessee to pay the special assessment, and a written undertaking by the lessor or owner to pay the special assessment to be made under the proposed improvement. The Council shall also at the hearing sit as a board of equalization to receive complaints or objections respecting the total amounts of the proposed assessments. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.4. Determination By Council.

After the hearing the Council shall consider any protests or suggestions which may have been made or filed and whether sufficient valid protests have been filed to compel it to abandon the proposed refunding plan. If the Council still has jurisdiction to continue, it shall then proceed to determine whether or not the refunding plan shall be adopted as proposed, or adopted with modifications, and in the latter event the County Clerk shall be directed to give notice again of the hearing as provided in Section 24-6.2(a)(2). If after such initial and further advertisement and hearing the Council determines to proceed with the refunding measure, it shall by ordinance promulgate the refunding measure. Should the refunding project provide for the issuance of new improvement district bonds in the improvement district, the ordinance shall provide for the form of new improvement district bonds to be issued, approve of the assessment roll, and incorporate the same by reference, which assessment roll as provided in Section 24-3.8, shall contain only the names of the property owners who have not fully paid the assessments originally provided for the payment of the outstanding improvement bonds and shall provide for the levying of new assessments in amounts sufficient to retire the improvement district refunding bonds to be issued pursuant to the terms hereof. After the final enactment of the ordinance the amounts of the several assessments so listed, advertised, or incorporated, not previously objected to, shall conclusively be presumed to be just and equitable and not in excess of the special benefits

accruing or to accrue by reason of the original improvement project. Upon final passage of the ordinance as provided above, all assessments therein made shall be a lien in the same manner and to the same extent as provided in Section 24-4.4; provided, that in no case shall this new assessment constitute a lien on property which has been discharged from the payment of the original assessment. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.5. Improvement District Refunding Bonds.

(a) Improvement district bonds issued for the refunding of the outstanding indebtedness of any improvement district shall bear the name of the improvement district for which they are issued, shall be in the form and issued and sold and subject to call and under all the other conditions and terms as prescribed by Sections 24-5.1 to 24-5.5, except as otherwise prescribed in this chapter.

(b) A lower rate of interest than that authorized in the original issue of bonds may be prescribed and the improvement district refunding bonds may be authorized to run for a term not to exceed fifteen years from the maturity date of the outstanding improvement district bonds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.6. Installments.

The provisions of Sections 24-4.5 to 24-4.7, relating respectively to the payment of the assessments in installments and the effect of failure to pay installments, are incorporated in Sections 24-6.1 to 24-6.9 by reference; provided that the maximum number of annual installments in which the assessment as provided for in Section 24-6.1 to 24-6.9 may be paid shall be dependent upon the term of the improvement district bonds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.7. Petition By All Owners.

If the petition is filed and acknowledged by the owners of land representing one hundred percent of the unpaid assessments in any improvement district, and by all lessees of any property to be assessed, who, by the express terms of their respective leases must pay the kind of assessments contemplated by Sections 24-6.1 to 24-6.9 unless the lessor of such lease files with the petition a duly acknowledged waiver of the stipulation in the lease which requires the lessee to pay such special assessments, and a written undertaking by the lessor or owner to pay the special assessments to be made under the proposed refunding plan, then the Council upon the payment to the Director of Finance of the cost of preparing the proposed

refunding plan, as estimated by the County Engineer, shall proceed as provided above to have a hearing on the proposed new method of assessment and the assessment roll; provided that in case the owners of one hundred percent as aforesaid, consent, in writing, to the amount and apportionment of the proposed assessments under the refunding plan, it shall be unnecessary to give the notice or to hold any of the hearings specified above and the Council may immediately proceed to fix the assessment in the manner provided. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.8. Refunded Improvement District Bonds To Be Canceled.

Upon payment and retirement of the outstanding bonds of the improvement district, the refunded improvement district bonds shall be forwarded to the registrar for the refunded improvement district bonds for cancellation. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

Sec. 24-6.9. Obligations Unimpaired.

Nothing in Sections 24-6.1 to 24-6.8 contained shall be construed as giving the Council or any improvement district authority to impair the obligations of the improvement district under any outstanding improvement district bonds. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

ARTICLE 7. LIMITATION ON TIME TO SUE

Sec. 24-7.1. Limitation On Time To Sue.

No action or proceeding to review any acts or proceedings or to question the validity or enjoin the performance of any act or the issue or payment of any improvement district bonds, or the levy or collection of any assessments authorized by this chapter, or for any other relief against any acts or proceedings, done or had under this chapter, whether based upon irregularities or jurisdictional defects or otherwise, shall be maintained unless begun within thirty days after the performance of the act or the passage of the resolution or ordinance complained of. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

ARTICLE 8. SEVERABILITY

Sec. 24-8.1. Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or

applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (Ord. No. 156, January 24, 1972; Ord. No. 550, February 10, 1989)

CHAPTER 25

SEWERS

(The purpose of this Chapter is to cover those ordinances regulating the use of public sewers; the connection of building sewers to public sewers; providing charges therefor; and regulating the discharge of water, sewage and other wastes into the public sewer systems.)

Article 1. General Provisions
- Sec. 25-1.1 Declaration Of Intent
- Sec. 25-1.2 Title
- Sec. 25-1.3 Application
- Sec. 25-1.4 Definitions

Article 2. Requirements For Use Of Public Sewers
- Sec. 25-2.1 Properties Accessible To Sewer
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- Sec. 25-2.3 Sludge, Cesspool And Septic Tank Wastes

Article 3. Restrictions On Use Of Public Sewers
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- Sec. 25-5.1 Sewage Treatment And Disposal Plants
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ARTICLE 1. GENERAL PROVISIONS

Sec. 25-1.1 Declaration Of Intent.

It is the intention of this Chapter to regulate the use of all public sewers and to fix the rates of sewer connection

assessment and service charge on property furnished with sewer service. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 697, October 12, 1995)

Sec. 25-1.2 Title.

This Chapter shall be known as and may be cited as the "Sewer Ordinance." (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 697, October 12, 1995)

Sec. 25-1.3 Application.

The provisions of this Chapter shall apply to all public sewers in the County of Kauai. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 697, October 12, 1995)

Sec. 25-1.4 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Activated Sludge" means mass of floc or settleable solids formed from the activated sludge process, containing the activated masses of microorganisms.

"Activated Sludge Process" means biological wastewater treatment process in which biologically active mass of microorganisms is continually circulated with incoming biologically degradable waste in the presence of induced aeration.

"Benefitted Property" means property or portion of a property provided with a connection to the public sewer, or where the benefit of sewer service becomes accessible.

"Bi-monthly" means every two months.

"B.O.D." represents Biochemical Oxygen Demand and means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees Centigrade (20 degrees C.), expressed in milligrams per liter by weight.

"Cesspool" means an excavation in the ground which receives untreated wastewater and is designed to retain the organic matter and solids discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

"Cesspool Wastes" means liquid and solid material pumped from a cesspool receiving untreated domestic sewage. For purposes of service charges, cesspool wastes shall include liquid and solid pumped from portable toilets.

"Connection" means an opening in the public sewer to which the building sewer may be connected.

"County Engineer" means the County Engineer of the Department of Public Works of the County of Kauai.

"Dual Meter" refers to properties which have separate Department of Water water meters for water which is returned to the public sewer and water which is not returned to the public sewer (e.g., irrigation water). In these cases, only the meter which meters water which is returned to the public sewer shall be used for wastewater billing purposes.

"Equivalent Population" means the calculated population which would normally contribute the same amount of suspended solids, biochemical oxygen demand or volume of flow per day as the daily wastes discharged by an industrial or commercial establishment, using as standard basis 0.17 pounds of suspended solids or biochemical oxygen demand and one hundred (100) gallons per capita per day.

"Existing Service Areas" means areas in which parcels have sewer service laterals to them as of October 12, 1995.

"Extension" means the continuation of an existing public sewer through public or private property not owned, in whole or in part by the applicant or owner of the particular property or subdivision to be served.

"Flat Rate" means a fixed charge as adopted by ordinance by the County Council.

"Garbage" means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.

"Garbage, Properly Shredded" means food wastes that have been properly shredded to such a degree that all particles will be carried freely under normal flow conditions in public sewers.

"Industrial User" means a non-governmental user of a publicly owned treatment works identified in the U.S. "Standard Industrial Classification Manual, 1972," under the following divisions:

Division A -	Agriculture, Forestry and Fishing
Division B -	Mining
Division D -	Manufacturing
Division E -	Transportation, Communications, Electric, Gas, and Sanitary Services
	Division I - Services

Users listed in these divisions may be excluded if it can be demonstrated that they discharge primarily domestic wastes.

"Industrial Wastes" means liquid wastes from industrial processes.

"Lateral" means a side sewer from a public branch or main sewer to the property line to serve one (1) or more lots.

"Main" means a sewer to which several laterals or other branch sewer lines are connected.

"Natural Outlet" means any natural outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

"Normal Domestic Strength Wastewater" means wastewater having the following characteristics:

BOD'S	2,000 lbs. per million gallons (240 mg/1) or less
SS	2,000 lbs. per million gallons (240 mg/1) or less
Grease	834 lbs. per million gallons (100 mg/1) or less
pH	not less than 5.5 and not more than 9.0

"Owner" means any person who has a whole or fractional interest in a house, building, lot or other real property.

"pH" means the logarithm of the reciprocal of the weight of hydrogen ion in grams per liter of solution.

"Projected Flow" means the estimated wastewater discharge from a benefitted property. Such estimates for residential developments shall be based upon a flow of 400 gallons per day per residential unit, as derived from the Sewer Design Standard for typical residential flow. Estimates for non-residential developments shall be based upon engineering estimates submitted by applicant and approved by the County Engineer.

"Return Factor" means the percentage of water usage that is discharged into the wastewater system.

"Septic Tank" means a water-tight settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank and the organic solids are decomposed by anaerobic bacterial action.

"Septic Tank Wastes" means liquid and solid material pumped from a septic tank, Type III marine sanitation device or similar treatment works that receives only domestic sewage, but does not include grease trap wastes.

"Sewage" means a combination of the water-carried wastes from residence, business buildings, institutions, and industrial establishment.

"Sewage Treatment Plant" means any arrangement of devices and structures used for treating sewage.

"Sewage Works" means all facilities for collecting, pumping, treating, and disposing of sewage.

"Sewer, Building or House" means that portion of the sewer line extending from a building to the public sewer or private disposal system.

"Sewer, Public" means a sewer controlled by the County of Kauai.

"Sewer, Sanitary" means a sewer which carries sewage and to which storm and surface waters and drainage are not intentionally admitted.

"Sewerable Area" means the maximum area that can be served by a lateral abutting a benefitted property by gravity or the maximum area utilized in the establishment of density under the Comprehensive Zoning Ordinance, whichever is greater.

"Sludge" means solids, semi-solids, aqueous suspensions of solids generated and removed from a sewage treatment plant.

"Slug Discharge" means any discharge of water, sewage or industrial wastes which in concentration of any given constituent or in quantity of flow exceeds for any period longer than fifteen minutes, more than five times the average twenty-four hour concentration or flows during normal operation.

"Subdivision" means a division of a piece of property into two (2) or more lots.

"Suspended Solids" means solids that are in suspension in sewage or waste waters; and which are removable by laboratory filtering.

"User" means an individual, establishment, or industry using any part of the public sewer.

"Waste Activated Sludge" means the excess activated sludge removed from the activated sludge process.

"Wastewater" means liquid waste of any kind, whether treated or not, and whether animal, mineral, or vegetable, including sewage, agricultural, industrial and thermal wastes.

"Wastewater Treatment Capacity Assessment Fee" means the fee to be paid by an applicant as the pro rata share of the cost of existing treatment facilities, termed cost recoupment, and the cost of new or expansion of treatment facilities.

"Zoning" means areas as determined by the Kauai General Plan and the Comprehensive Zoning Ordinance. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 151, August 5, 1971; Sec. 25-1.4, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-1.4, 1978 Cumulative Supplement; Ord. No. 412, August 28, 1981; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998; Ord. No. 751, November 6, 2000)

ARTICLE 2. REQUIREMENTS FOR USE OF PUBLIC SEWERS

Sec. 25-2.1 Properties Accessible To Public Sewer.

(a) Every lot which is accessible to a public sewer shall be connected to the public sewer if any plumbing fixtures are located on it. For the purposes of this Chapter, a lot is deemed to be accessible to a public sewer system if the lot has a sewer service lateral available to it. If such plumbing fixtures have not been connected to the public sewer within 120 (one hundred twenty) days after the lot owner has been notified to do so in writing by the County Engineer, the

lot shall be subject to a sewer user charge pursuant to Section 25-13.2(b). This does not relieve the owner of the lot from complying with the provisions of this Chapter.

(b) This section shall not apply to a lot or portion thereof which is below the level of the public sewer and would require the installation of a pump to lift the sewage to the proper elevation for discharge into the public sewer.

(c) In any civil or criminal prosecution for any violation of this Chapter, it shall be presumed that a lot has not been connected to a sewer, even if a sewer user charge is being assessed pursuant to Section 25-2.1, where either:

1) a permit to connect a lateral has not been obtained pursuant to Article 9 or 10 of this Chapter,

2) a plumbing permit has not been obtained pursuant to Article 9 or 10 of this Chapter, or

3) an inspection and approval has not been obtained from the County Engineer pursuant to Article 9 or 10 of this Chapter. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-2.1, R.C.O. 1976; Sec. 25-2.1, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-2.2 Subdivisions.

Where public sewer service is accessible to any subdivision the subdivider shall install all necessary sewage works to serve all lots. Where public sewer service is not accessible, the requirements for proper disposal of sanitary sewage for the subdivision shall be determined by the State Department of Health and the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-2.2, R.C.O. 1976; Sec. 25-2.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-2.3 Sludge, Cesspool And Septic Tank Wastes.

Notwithstanding any other provision in this Chapter to the contrary, the County Engineer is authorized to regulate the disposal of sewage sludge from private sewage treatment plants and wastes, whether treated or untreated from private cesspools or septic tanks into County sewage treatment and disposal facilities pursuant to rules and regulations adopted pursuant to Chapter 91 of the Hawaii Revised Statutes. The rules and regulations shall establish the quantity and quality of sludge and waste, procedures for disposal including requiring permits, bonding for commercial disposers, times of disposal, fees for disposal, and any other term or condition of disposal. (Sec. 25-2.3, R.C.O. 1976; Sec. 25-2.3, 1978 Cumulative Supplement; Ord. No. 412, August 28, 1981; Ord. No. 453, December 12, 1983; Ord. No. 697, October 12, 1995)

ARTICLE 3. RESTRICTIONS ON USE OF PUBLIC SEWERS

Sec. 25-3.1 Drainage And Unpolluted Water.

No person shall discharge or cause to be discharged, directly or indirectly, any storm water, surface water, ground water, roof runoff, sub-surface drainage, cooling water, air conditioning condensate or other unpolluted drainage into any public sewer, except swimming pool water may be discharged at the time and hour permitted and designated by the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-3.1, R.C.O. 1976; Sec. 25-3.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-3.2 Unacceptable Wastes.

Except as provided in other Sections of this Chapter, no person shall, directly or indirectly, discharge or cause to be discharged into a public sewer any of the following:

(1) Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150 degrees F).

(2) Any water or waste which may contain more than one hundred (100) parts per million, by weight, of fat, oil, or grease.

(3) Any gasoline, benzene, naptha, fuel oil, or other flammable or explosive liquid, solid, or gas.

(4) Any residential garbage that has not been properly shredded. Garbage from commercial food establishments is prohibited.

(5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.

(6) Any water or wastes having pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

(7) Any water or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animal, or create any hazard in the receiving waters.

(8) Any noxious or malodorous gas or explosive liquids or substance capable of endangering public property and safety, or creating a public nuisance.

(9) Water or wastes containing suspended solids of such character or quantity that unusual attention or expense is required to handle such materials at a wastewater treatment plant.

(10) Any unusual volume of flow or concentration of wastes constituting slug discharges as defined herein.

(11) Radioactive wastes or isotopes of such half-life or concentration that may exceed limits established by the County Engineer in compliance with applicable State or Federal regulations.

(12) Water added for the purpose of diluting wastes which would otherwise exceed applicable maximum concentration limitations.

(13) Unreasonably large amounts of dissolved solids.

(14) Water or wastes with concentrations exceeding National Categorical Pretreatment Standards promulgated by the U.S. Environmental Protection Agency in accordance with Section 307 (b) and (c) of the Federal Water Pollution Control Act, as amended. Upon promulgation, National Categorical Pretreatment Standards, if more stringent than limitations imposed under this section, shall immediately supersede the limitations imposed under this section.

(15) Any substance which may cause a County wastewater treatment plants' discharge or any other products thereof, such as residues, sludge, or scum to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to a County wastewater treatment plant cause it to be in non-compliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Federal Water Pollution Control Act (P.L. 95-500) as amended; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act; or State criteria applicable to the sludge management method being used.

(16) Any substance which will cause a County wastewater treatment plant to violate its National Pollutant Discharge Elimination System Permit or State Water Quality Standards. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-3.2, R.C.O. 1976; Sec. 25-3.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-3.3 Volume And Rate Of Discharge.

The County Engineer may prohibit admission into the public sewers of any additional volume of water or wastes, wherever and to the extent that the existing sewage works of the County shall not be capable of receiving and disposing of the water or waste, together with the normal sewage flow of that tributary area. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-3.3, R.C.O. 1976; Sec. 25-3.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-3.4 Tampering With Public Sewer.

No person shall obstruct or cause to make inaccessible any portion of the public sewer, uncover or tamper with any public sewer, or connect to it, or throw anything into any

sewer manhole without the written permission of the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-3.4, R.C.O. 1976; Sec. 25-3.4, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-3.5 Sealing Disconnected Sewer.

No person shall remove or demolish any building or structure with plumbing fixtures connected directly or indirectly with the public sewer without first obtaining the approval of the County Engineer. All openings in the sewer line caused by the removal of any building or structures shall be sealed in such a manner as to prevent earth, debris, rain, surface, storm, or other water from entering the public sewer system. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-3.5, R.C.O. 1976; Sec. 25-3.5, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-3.6 Preliminary Treatment.

(a) Where preliminary treatment is deemed necessary by the County Engineer to render any water or wastes acceptable for discharge into the sewage works, suitable preliminary treatment facilities shall be provided by the owner and maintained continuously in satisfactory and effective operation at his own expense. Grease, oil, sand and dirt interceptors, screening devices, facilities for pH adjustment, and other preliminary treatment facilities shall be of a type and capacity as approved by the County Engineer.

(b) When pre-treatment standards, as promulgated by the U.S. Environmental Protection Agency (EPA) for specific industrial classes, are more stringent than the acceptable limits under this Chapter, EPA standards shall be adhered to by the County.

(c) All pre-treatment facilities shall be located as to be readily accessible for cleaning and inspection. In maintaining these facilities, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, amounts, and means of disposal which are subject to review by the County Engineer. The use of enzymes, bacterial cultures, degreasers, hot water, or steam in the grease interceptor is strictly prohibited.

(d) When required by the County Engineer, the owner of any property served by a building sewer requiring preliminary treatment facilities shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of waste. Such manhole shall be constructed in accordance with plans approved by the County Engineer. The manhole shall be installed and maintained by the owner at his expense. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 345, April 3, 1978; Sec. 25-3.6, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

ARTICLE 4. RIGHT-OF-ENTRY AND INSPECTION

Sec. 25-4.1 Existing Systems.

The County Engineer may to the extent permitted by law, without a warrant, at any time enter any building or premises in the discharge of his official duties to inspect, investigate, measure or test the waste discharged directly into the sewer system or from any private sewer connected, directly or indirectly to the public system. (Ord. No. 345, April 3, 1978; Sec. 25-4.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-4.2 Excessive Infiltration.

Whenever deemed necessary by the County Engineer all existing private sewers connected to the public system may and upon connection to the public system shall be inspected and tested for excessive infiltration. If the rate of infiltration is excessive, the owner, when informed by the County Engineer, shall effectuate remedial measures approved by the County Engineer within one hundred twenty (120) days at his own expense. Infiltration in excess of two hundred (200) gallons per day per inch of diameter of pipe per mile of pipe shall be considered excessive. (Ord. No. 345, April 3, 1978; Sec. 25-4.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

ARTICLE 5. ADMINISTRATION, MANAGEMENT AND CONSTRUCTION OF SEWAGE WORKS; GENERAL REQUIREMENTS

Sec. 25-5.1 Sewage Treatment And Disposal Plants.

Where sewage is to be discharged into any natural outlet, primary or complete treatment facilities, in accordance with regulations and requirements of the State Department of Health shall be provided. If those treatment facilities are dedicated or are intended to be dedicated to the County, the type, capacity, design and location of the treatment plant shall be approved by the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-4.1, R.C.O. 1976; Sec. 25-5.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-5.2 Pumping Stations.

Pumping stations shall be provided where the terrain of the area to be developed is such as to require pumping to lift the sewage to proper elevation for discharge to a treatment plant site, public sewer or discharge outfall. These stations shall be of adequate capacity and shall include the necessary physical units for proper operation, control and maintenance. Suitable locations of these stations which are dedicated or are intended to be dedicated to the County shall be approved by the County Engineer. (Ord. No. 131, August 28, 1967;

Sec. 6, C.O. 1971; Sec. 25-4.2, R.C.O. 1976; Sec. 25-5.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-5.3 Sewer Mains.

Sewer mains shall be of length, type and size necessary to provide the area with adequate sewage disposal and so located as not to be contrary to the location fixed for utilities by the County General Plan and the Comprehensive Zoning Ordinance for water, sewage and drainage. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-4.3, R.C.O. 1976; Sec. 25-5.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-5.4 Laterals.

A lateral shall be run to provide service to each lot in accordance with Section 25-9.2 of this Chapter. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-4.4, R.C.O. 1976; Sec. 25-5.4, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-5.5 Construction Standards.

All public sewage works construction shall be performed in accordance with the current County Standards and as required by the County Engineer. All construction plans and specifications for private sewage works connecting directly or indirectly into the public sewers, shall be approved by the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-4.5, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-5.5, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

ARTICLE 6. IMPROVEMENT DISTRICTS; ADMINISTRATION, MANAGEMENT AND CONSTRUCTION

Sec. 25-6.1 Improvement Districts.

Benefitted property shall be assessed as prescribed by Chapter 24, of this Code. Each assessed area shall be provided with a connection. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-5.1, R.C.O. 1976; Sec. 25-6.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

ARTICLE 7. SUBDIVISIONS; ADMINISTRATION, MANAGEMENT AND CONSTRUCTION

Sec. 25-7.1 Cost Of Construction.

(a) In every subdivision where sewers, sewage pumping station, force main, outfall and sewage treatment units are deemed necessary by the County and State Department of Health, the cost of constructing sewage works shall be borne by the subdivider.

(b) Additional costs brought about by increasing the pipe sizes or depths of laying or the capacity of the pumping station, force main, outfall, or treatment plant to serve areas other than the subdivision shall be borne by the County. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-6.1, R.C.O. 1976; Sec. 25-7.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-7.2 Approval Of Plans.

All construction plans and specifications for sewage works shall be approved by the County Engineer. In the event that construction has not commenced within one (1) year after date of approval, the construction plans and specifications shall be resubmitted for reapproval. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-6.2, R.C.O. 1976; Sec. 25-7.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-7.3 Inspection.

During the construction of all sewage works the County Engineer shall have access thereto for inspection purposes and, if in his discretion, the County Engineer shall deem it advisable may require an inspector on the job continuously. At no time shall sewer work be backfilled or covered until the County Engineer has been notified and has given his approval after proper inspection and testing. If the work is not approved, it shall be repaired or removed and reconstructed, as directed by the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-6.3, R.C.O. 1976; Sec. 25-7.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-7.4 Acceptance.

(a) All sewage works found acceptable by the County Engineer to be maintained and operated as part of the public system shall become the property of the County. Prior to final acceptance, the subdivider shall deliver to the County perpetual easement for all portions of the subdivision sewer system installed in other than publicly owned property. The subdivider shall also convey to the County fee simple title to all sites on which a pumping station or treatment plant is constructed by the subdivider as part of the public sewage works, together with easements for ingress and egress.

(b) Final approval and acceptance of subdivision sewage works shall not be granted until the subdivider has settled all financial accounts with the County. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-6.4, R.C.O. 1976; Sec. 25-7.4, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

ARTICLE 8. EXTENSIONS; ADMINISTRATION, MANAGEMENT AND CONSTRUCTION

Sec. 25-8.1 Application.

Upon receipt of a written application for a sewer extension, the County Engineer shall make an estimate of the cost and submit it to the applicant. If the applicant then deposits with the County a sum equal to fifty percent (50%) of the cost specified, the matter will be referred to the County Council and, subject to their approval and the appropriation of the County's share of fifty percent (50%) of the costs, the extension will be made as soon as conveniently possible. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-7.1, R.C.O. 1976; Sec. 25-8.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-8.2 Specifications.

The County shall make the extension, including any lateral, to serve the applicant's property. The County shall determine the alignment, the materials to be used, and the manner of construction. The property owner shall not have any title to the extension. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-7.2, R.C.O. 1976; Sec. 25-8.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-8.3 Construction By Applicant.

If the applicant prefers, he may pay the full cost for the extension. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-7.3, R.C.O. 1976; Sec. 25-8.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

ARTICLE 9. LATERALS; ADMINISTRATION, MANAGEMENT AND CONSTRUCTION

Sec. 25-9.1 Application And Permit.

(a) An application for a lateral to a lot shall be made on a form prescribed by the County Engineer, Department of Public Works of the County of Kauai.

(b) A permit to connect a lateral shall be obtained from the Department of Public Works, before making any connection to the lateral. The permit shall be issued only after a Plumbing permit has been obtained from the Building Division. No fee shall be charged for the permit to connect. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 151, August 5, 1971; Sec. 25-8.1 & Sec. 25-8.5, R.C.O. 1976; Sec. 25-9.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-9.2 Location.

New laterals will be installed as near as practicable to the exact location desired by the applicant, but if branches are already in the main or other outlets are available near at

hand, the lateral may be run from them. The County reserves the right to establish the alignment of the lateral, the location of the connection, and to provide service to other lots from the same lateral. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-8.2, R.C.O. 1976; Sec. 25-9.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-9.3 Construction.

(a) All laterals shall be a minimum of six (6) inches in diameter and constructed at right angles to the main on a minimum grade of one percent (1%), unless excepted by the County Engineer. Each lateral shall terminate at the property line with a six inch by four inch (6" x 4") reducer approved by the County Engineer, properly plugged. A four inch (4") or appropriate size cast iron long radius 90 degree bend shall be connected to the reducer from which shall vertically extend the cast iron, PVC or ABS (Schedule 40) riser and cleanout to at least one inch above ground except in a sidewalk or driveway area. In sidewalk or driveway areas, the cleanout shall be flush with the surface and shall be made of cast iron or brass body with recessed brass plug.

(b) Connection of the building sewer by the property owner to the riser shall not be backfilled or covered until approved by the County Engineer. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-8.3, R.C.O. 1976; Sec. 25-9.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-9.4 Charges For Lateral.

Where there is no lateral to a lot and the applicant desires to construct one, the applicant shall construct the lateral at his cost. For the initial lateral constructed to the lot, the owner shall be entitled to a credit on the sewer connection charge for the said property pursuant to Article 11, up to the cost of the lateral or the amount of the connection charge, whichever is less. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Ord. No. 151, August 5, 1971; Sec. 25-8.4, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-9.4, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

ARTICLE 10. APPLICATION FOR SEWER SERVICE

Sec. 25-10.1 Application For Sewer Service.

(a) The owner of each and every lot, parcel of land, building, dwelling unit or premises which is accessible to or connected directly or indirectly to the sanitary sewerage systems of the County, shall fill out and file with the County Engineer an application form prescribed by the County Engineer for the purposes of administration and enforcement of this Chapter. There shall be no processing fee for the application except as provided in Subsection 25-10.1(d).

(b) Prior to making of any physical connection to the public sewer system, a sewer permit and a plumbing permit shall be obtained from the Department of Public Works.

(c) Any connection to the public sewer system shall be constructed in accordance with County standards and shall be subject to inspection by the Department of Public Works in the same manner as specified in Article 9 above.

(d) Expiration. Every permit to connect to the public sewer system issued by the Division of Wastewater Management, Department of Public Works, under the provisions of this Article shall expire by limitation and become null and void if connection to the public sewer is not completed within 180 calendar days from the date of issuance of the permit, provided, however, in the event of strikes or other causes beyond the control of the owner, the County Engineer, may, in writing, extend the 180 calendar days; provided further, that a connection permit issued for a project having a valid building permit shall expire only when such building permit expires. For existing connection permits presently in effect, the 180 calendar days time period shall commence from June 4, 1998.

Where a connection permit has expired, a new permit shall be first obtained by the owner and the permit fee thereto shall be $25. Sewer connection charges and wastewater treatment capacity assessments pursuant to Article 11 and Article 12 of this Chapter, shall be recalculated using the rates applicable at the time the new permit is issued less the amounts previously paid to the County.

(e) Refund of Fees When Connection Permit Expires. In the event a connection permit expires as set forth in Section 25-10.1(d), the owner may file for a refund with the Director of Finance or his designee, on the form prescribed by the Department of Finance and the Director of Finance or his designee, may refund the amount paid by the owner in excess of ten percent (10%) of the total amounts due from the owner for sewer connection charges and wastewater treatment capacity assessments. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-10.1, R.C.O. 1976; Sec. 25-10.1, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-10.2 Application To Dispose Cesspool/Septic Tank Waste.

(a) Any appropriately licensed pumper desiring to dispose of cesspool or septic tank waste or both at any County wastewater facility, shall obtain a Permit to Discharge from the Department of Public Works. The owner of the firm shall submit an application form prescribed by the County Engineer. Every applicant shall pay a basic filing fee of Fifty Dollars ($50) plus Ten Dollars ($10) for each truck being registered.

(b) Each application shall be signed by the owner and shall constitute an acknowledgement that the owner shall assume responsibility for compliance with applicable

regulations and the conditions of the Permit to Discharge. Non-compliance with any condition of the permit may be grounds for revocation of the Permit to Discharge and denial of future applications.

(c) A Permit to Discharge shall be for a period not to exceed two (2) years. The expiration date shall be set at the end (December 31) of the appropriate calendar year. Permit conditions shall require the permittee to submit information necessary to determine the origin or source of the waste and other information as determined by the County Engineer.

(d) The Department of Public Works, on a random and periodic basis as time permits, as determined by the County Engineer, shall audit the record submitted to verify origin of the waste.

(e) In the event of any discrepancy, the licensed pumper shall be notified and given an opportunity to explain the discrepancy. If the discrepancy cannot be resolved and a violation is confirmed, the County Engineer shall, in addition to any other penalties available in this Chapter, revoke the Permit to Discharge. (Ord. No. 697, October 12, 1995)

ARTICLE 11. SEWER CONNECTION CHARGES

Sec. 25-11.1 Unassessed Area.

(a) If an area to be served has not been previously assessed, the owner shall be required to pay a sewer connection charge of:

(1) Twelve cents (12¢) per square foot of sewerable area for Hospital and Industrial uses;

(2) Ten cents (10¢) per square foot of sewerable area for Commercial use;

(3) Two hundred dollars ($200) per dwelling unit or Twelve cents (12¢) per square foot of sewerable area for Hotel Resort use, whichever is greater;

(4) Two hundred dollars ($200) per dwelling unit or Ten cents (10¢) per square foot of sewerable area for Multiple-family Residential use, whichever is greater;

(5) Single family residences at fifty dollars ($50) per residential unit.

(6) Non-profit or eleemosynary corporations not covered by the above categories shall be assessed two hundred dollars ($200). (Ord. No. 151, August 5, 1971; Sec. 25-9.2, R.C.O. 1976; Ord. No. 345, March 20, 1978; Sec. 25-11.1, 1978 Cumulative Supplement; Ord. No. 362, March 22, 1979; Ord. No. 697, October 12, 1995)

Sec. 25-11.2 Exemptions.

(a) No sewer connection charges shall be made for a voluntary, non-profit, non-sectarian, community hospital.

(b) No sewer connection charge shall be made for any Federal, State or County Agency.

(c) No sewer connection charges shall be made when as part of a subdivision, the sewer collection system, including the lateral, was constructed by the developer or subdivider.

(d) No sewer connection charges shall be made when connection charges are credited pursuant to Section 25-9.4 of this Chapter. (Ord. No. 151, August 5, 1971; Sec. 25-9.2, R.C.O. 1976; Sec. 25-11.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-11.3 Assessed Area.

No additional charge shall be made for one (1) connection to an assessed lot, provided that the assessment has been paid by the owner. (Ord. No. 151, August 5, 1971; Sec. 25-9.2, R.C.O. 1976; Sec. 25-11.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-11.4 Changes In Land Use; Additional Charges.

Additional charges shall be made for any changes in land use which results in a greater intensity of land use or sewerable area. The additional charges shall be determined by using the applicable rates under Section 25-11.1, less the amount previously assessed. (Ord. No. 151, August 5, 1971; Sec. 25-9.2, R.C.O. 1976; Sec. 25-11.4, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Sec. 25-11.5 Installment Payments.

(a) Single Family Unit. The connection charge for every single family unit shall be paid in full prior to issuance of the sewer connection permit.

(b) Connection Charge For Other Users. The connection charge for other users may be paid in accordance with the following schedule:

(1) twenty-five percent (25%) of the applicable fee to be paid prior to the issuance of the sewer connection permit; and

(2) the remaining seventy-five percent (75%) of the applicable fee may be payable in equal bimonthly installments over a one year period.

There shall be added to each monthly installment, interest on the unpaid balance of the sewer connection charge from the time of owing, at a rate to be calculated as one percent (1%) higher than the New York prime rate. (Ord. No. 151, August 5, 1971; Ord. No. 199, November 27, 1973; Ord. No. 283, May 19, 1976; Sec. 25-9.2, R.C.O. 1976; Sec. 25-11.5, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

ARTICLE 12. WASTEWATER TREATMENT CAPACITY ASSESSMENT

Sec. 25-12.1 Wastewater Treatment Capacity Assessment.

Applicants requiring connections to the sewer system shall be assessed a Wastewater Treatment Capacity Assessment fee in accordance with the following schedules:

(a) Applicants Inside Existing Service Areas

Residential unit:

Effective Date	$ per unit
July 1, 1996	2,850
July 1, 1997	3,200
July 1, 1998	3,550
July 1, 1999	3,900

Non-residential users:

Non-residential users shall be assessed Wastewater Treatment Capacity Assessment fees ($ per unit) based on the following schedule:

Eff. Date	Size of water meter .75"	1.0"	1.5"	2.0"	3.0"	4.0" or less
7/1/96	$2,850	4,845	9,405	15,105	30,495	47,595
7/1/97	$3,200	5,440	10,560	16,960	34,240	53,440
7/1/98	$3,550	6,035	11,715	18,815	37,985	59,285
7/1/99	$3,900	6,630	12,870	20,670	41,730	65,130

Non-residential applicants who use a water meter which is greater than four inches in diameter shall be assessed Wastewater Treatment Capacity Assessment fees based on the following per gallon per day rate schedule of the applicant's projected flow approved by the County Engineer:

Effective Date	
July 1, 1996	$7.13
July 1, 1997	8.01
July 1, 1998	8.88
July 1, 1999	9.76

(b) Applicants Outside Existing Service Areas

Effective October 12, 1995, the Wastewater Treatment Capacity Assessment fee shall be $3,900 per residential unit and for non-residential users as follows:

Size of Water Meter .75"or less	1.0"	1.5"	2.0"	3.0"	4.0"
$3,900	6,630	12,870	20,670	41,730	65,130

Non-residential applicants who use a water meter which is greater than four inches in diameter shall be assessed Wastewater Treatment Capacity Assessment fees based on $9.76 per gallon per day of the applicant's projected flow, approved by the County Engineer.

(c) The fees in this Article may be paid in accordance with the following schedule:

(1) ten percent (10%) of the applicable fee to be paid prior to the issuance of the sewer connection permit; and

(2) the remaining ninety percent (90%) of the applicable fee may be payable in equal bi-monthly installments over a one year period.

(3) there shall be added to each bi-monthly installment, interest on the unpaid balance of the applicable fee from the time of owing, at a rate to be calculated as one percent (1%) higher than the New York prime rate. (Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-12.2 Changes In Land Use; Additional Charges.

Additional charges shall be made for any changes in land use which results in a greater intensity of land use. The additional charges shall be determined by using the applicable rates under Section 25-12.1, less the applicable amount previously assessed under Section 25-12.1.

Properties connected to the sewer prior to the effective date of the Wastewater Treatment Capacity Assessment, upon an increase in their water usage requiring an increase in water meter size, shall be assessed the current assessment corresponding to their new water meter size, less the current assessment corresponding to the previous water meter size. (Ord. No. 697, October 12, 1995)

Sec. 25-12.3 Exemptions.

(a) County facilities, except for Department of Water, are exempt.

(b) Housing projects or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Administrator of the County Housing Agency shall be exempt provided such projects conform to applicable provisions of the County's affordable housing program.

(c) Housing projects or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Administrator of the County Housing Agency shall be exempt from one-half of the Waste Water Treatment Capacity Assessment, provided such projects conform to applicable provisions of the County's affordable housing program. (Ord. No. 697, October 12, 1995)

ARTICLE 13. SEWER SERVICE CHARGES

Sec. 25-13.1 Declaration Of Policy.

It is hereby determined and declared to be necessary for the County to establish, levy, and collect sewer service charges upon all lots, lands, buildings, dwelling units and premises accessible to or served by connections, either directly or indirectly, with the public sanitary sewerage systems. The revenues so derived shall be used for the management, operation, maintenance, repair and replacement of the public sanitary sewerage system. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-9.1, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-12.1, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995)

Sec. 25-13.2 Assessment Of User Charge.

(a) All persons who are connected, directly or indirectly to the public sewer system as defined in Section 25-13.3 shall pay a sewer user charge.

(b) An owner of a lot which is accessible to a public sewer system and which has any plumbing fixtures located on it shall be assessed a sewer user charge pursuant to this Chapter. (Ord. No. 345, April 3, 1978; Sec. 25-12.2, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995)

Sec. 25-13.3 User Classification.

Two major user classifications - "residential" and "non-residential" are adopted because of possible differences in strength characteristics and in the relationship between water usage and wastewater discharge quantities for each class of user.

(a) "Residential Users" are defined to include only the following:

(1) Single family dwellings

(2) Duplexes

(3) Apartment buildings, condominiums and townhouses

(4) Governmental housing projects

(b) "Non-Residential Users" are defined to include all industrial, commercial, agricultural, governmental, and miscellaneous services, plus the following which are specifically excluded from the above definition of "Residential Users."

(1) Hotels, motels, resorts, lodges, timeshares, boarding house, hostel, etc., and condominiums, primarily used as hotels.

(2) Single parcel of land used for non-residential purposes, although containing residential dwelling units, excepting when non-residential structures and residential

dwellings are separately metered for water. When non-residential structures and residential dwellings are separately metered the appropriate rates for each category shall apply.

(3) All other special establishments not distinguishable as a residential dwelling unit, as determined by the County Engineer.

(4) Group I A Commercial shall consist of users whose strength characteristics of its wastewater is similar to that of domestic waste and with a return factor of less than 50%, which includes but is not limited to the following:

Bottled Water Manufacturer
Soft Water Service Manufacturer
Ice Manufacturer

Group I B Commercial shall consist of users whose strength characteristics of its wastewater is similar to that of domestic waste and with a return factor equal to or greater than 50%, which includes but is not limited to the following:

Car Wash, including but not limited to:
- Automatic
- Coin-operated
- In-bay

Office Building

Professional Building, including but not limited to:
- Doctor Office
- Clinic
- Rehabilitation Center
- Pharmacy
- Laundromat
- Mixed Use (shopping center) without Restaurant

Department and Retail Store, including but not limited to:
- Convenience Store
- Beauty shop
- Barber shop

Warehouse

Theatre, including but not limited to:
- Entertainment Hall Providing Audio/Video Performance, Screening Facilities
- Drive-in
- Live/Music/Opera
- Cinema

Membership Organizations, including but not limited to:
- Neighborhood Center
- Church

Social Services, including but not limited to:
- Library
- Police Station
- Fire Station

5) Group II Commercial shall consist of users whose loading characteristics of its wastewater are slightly higher than domestic waste, which includes but is not limited to the following:

Repair & Service Stations, including but not limited to:

- Auto Body/Mechanical Shop
- Auto Manufacturer/Service Maintenance
- Gas Station (Self Service and Bays)
- Aircraft Hanger
- Heliport
- Miscellaneous Repair Shops
- Truck Repair and Service

Newspaper Company
Commercial Laundry
Lumber Yard
Mixed Use (shopping center) with Restaurant
Nursery, Greenhouse
Nightclub, Bars
Amusement Park
Hospital
Convalescent Home
Nursing Home
Prison

(6) Group III Commercial shall consist of users whose business is heavily involved in food processing and/or whose loading characteristics of its wastewater are much higher than domestic waste, which includes but is not limited to the following:

Food Processors, including but not limited to:

- Bakeries
- Candy Manufacturer and Confectioner
- Dairy Product Manufacturer
- Processor in Citrus, Fish, Dried Fruit, Egg, Fruit, Vegetable, Meat
- Meat Packer
- Miscellaneous Food Products
- Vegetables
- Brewery, Distillery, Winery, Beverage Manufacturer

Supermarket
Mortuary (Ord. No. 345, April 3, 1978; Sec. 25-12.3, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 751, November 6, 2000; Ord. No. 751, November 6, 2000)

Sec. 25-13.4 Schedule Of Rates.

(a) For users of Private Water Systems. Sewered properties of 'non-residential' use utilizing private water systems will be required to install prior to or at the time connection is made, at their own expense, water meters

approved by the County Engineer measuring the water quantity used, or alternatively, will be required to install, at their own expense and at an appropriate location, a calibrated flume, weir, flow meter or similar device approved by the County Engineer for measuring wastewater quantity. A flow recording and totaling register will be required for an approved flow measuring device. Measurements to verify the quantities of flows will be performed on a random basis by the County Engineer.

(b) Effective July 1, 1996, monthly sewer service charges shall be a service charge plus a volume charge based on the following:

BEGINNING:	July 1, 1996 Monthly Charge	July 1, 1997 Monthly Charge	July 1, 1999 Monthly Charge	July 1, 2000 Monthly Charge
SERVICE CHARGE				
Residential				
Single Family	30.50	34.22	34.22	34.22
Multi-Family	30.50	34.22	34.22	34.22
Non-Residential				
Industrial	5.75	5.75	5.75	5.75
Hotels/Motels/Resorts	5.75	5.75	5.75	5.75
All Others	5.75	5.75	5.75	5.75
VOLUME CHARGE	$/1,000Gal	$/1,000Gal	$/1,000Gal	$/1,000Gal
Residential				
Single Family				
Multi-Family				
Non-Residential (Metered Water)				
Industrial	4.19	4.71	5.29	5.90
Hotels/Motels/Resorts	3.46	3.89	4.39	4.91
All Others	2.31	2.62	2.97	3.35
Non-Residential (Metered Wastewater/Dual Meter)				
Industrial	6.45	7.24	8.14	9.08
Hotels/Motels/Resorts	5.31	5.99	6.74	7.55
All Others	3.55	4.04	4.57	5.16
Cesspool Waste Disposal	30.00	30.00	30.00	30.00
Septic Tank Waste Disposal	95.00	108.00	119.00	132.00
Waste Activated Sludge (WAS)	30.00	30.00	33.00	37.00

Volume charges for residential users apply only to the first 9,000 gallons of metered water per month per dwelling unit.

(c) Residential Users. Effective January 1, 2001, monthly sewer service charges for residential users shall be in accordance to the following:

	BEGINNING: January 1, 2001	July 1, 2001	July 1, 2002	July 1, 2003	July 1, 2004
FLAT RATE					
Single Family	34.22	38.00	40.39	42.43	45.00
Multi-Family	34.22	38.00	40.39	42.43	45.00

OR

SERVICE CHARGE PLUS VOLUME CHARGE

SERVICE CHARGE					
Single Family	25.00	25.00	25.00	25.00	25.00
Multi-Family	25.00	25.00	25.00	25.00	25.00
VOLUME CHARGE	$ per thousand gallons of metered water.				
Single Family	1.32	1.72	2.15	2.57	2.93
Multi-Family	1.32	1.72	2.15	2.57	2.93

Flat rates and service charges for residential users shall be applied to each residential unit.

Residential users shall continue to be billed the flat rate until such time that the service charges plus volume based billing process is implemented in the County's computerized billing system. Residential users will be notified of the change in billing at least thirty (30) days in advance. The service charge plus volume rate to be imposed shall be the applicable rate on the effective date as indicated in the notice.

Volume charges for residential users apply only to the first 9,000 gallons of metered water per month per dwelling unit.

(d) Non-Residential Users. Effective January 1, 2001, monthly sewer service charges for non-residential users shall be a service charge plus a volume charge in accordance to the following:

	BEGINNING: January 1, 2001	July 1, 2001	July 1, 2002	July 1, 2003	July 1, 2004
SERVICE CHARGE					
All Non-Residential Users	5.75	5.75	5.90	6.47	7.06
VOLUME CHARGE (Metered Water)		$ Per Thousand Gallons			
Hotels/Motels/Resorts, etc., Without Restaurant	4.91	4.91	4.91	4.91	4.91
Hotels/Motels/Resorts, etc., With Restaurant	5.19	5.44	5.66	6.02	6.34

BEGINNING:	January 1, 2001	July 1, 2001	July 1, 2002	July 1, 2003	July 1, 2004
VOLUME CHARGE (continued) (Metered Water)		$ Per Thousand Gallons			
Restaurant	8.24	8.61	8.93	9.57	10.08
Group I A Commercial	3.35	3.35	3.35	3.35	3.35
Group I B Commercial	3.52	3.69	3.85	4.04	4.26
Group II Commercial	4.72	4.94	5.15	5.45	5.74
Group III Commercial	8.04	8.38	8.71	9.32	9.84
School	2.54	2.66	2.77	2.91	3.06
Park	0.47	0.49	0.51	0.53	0.56
Manufacturing/ Industrial	5.90	5.90	5.90	6.04	6.36
Airport	3.45	3.62	3.78	3.96	4.17
(Metered Wastewater/Dual Meter)			$ Per Thousand Gallons		
Hotels/Motels/ Resorts, etc. Without Restaurant	5.73	6.00	6.24	6.60	6.95
Hotels/Motels/ Resorts, etc. With Restaurant	7.98	8.37	8.70	9.26	9.76
Restaurant	11.00	11.47	11.92	12.76	13.44
Group I Commercial	4.69	4.92	5.13	5.39	5.67
Group II Commercial	6.30	6.59	6.86	7.27	7.66
Group III Commercial	10.72	11.19	11.63	12.44	13.11
School	4.60	4.83	5.03	5.28	5.56
Park	4.60	4.83	5.03	5.28	5.56
Manufacturing/ Industrial	6.97	7.30	7.59	8.06	8.49
Airport	5.16	5.16	5.16	5.28	5.52

	BEGINNING: January 1, 2001	July 1, 2001	July 1, 2002	July 1, 2003	July 1, 2004
Cesspool Waste Disposal	30.00	30.00	30.00	30.00	30.00
Septic Tank Waste Disposal	132.00	132.00	132.00	132.00	132.00
Waste Activated Sludge (WAS)	37.00	37.00	37.00	37.00	37.00

An account with two different types of customer classes serviced by the same water meter shall be charged the higher rate.

Should an owner of a mixed use with restaurant account install a new meter to service the restaurant only, then the uses associated with the respective meters will be charged the appropriate rates.

For uses not specifically included in the list of categories Group I, II or III, the County based on information provided by the applicant on usage(s) of the property, would designate at it's sole discretion, the appropriate category for sewer billing. Generally establishments not listed in Group II or Group III Commercial would be considered to be Group I Commercial unless specific information indicates otherwise.

(d) Change in use of the property. Whenever there is a change in the use of a property, the owner of the property shall notify the Division of Wastewater Management of the change thirty (30) days prior to the initiation of the new use. If the change in the use of the property results in a change to the method of billing wastewater charges, billing shall be accomplished pursuant to Sec. 25-13.6 Charges For the First and Last Months. (Ord. No. 131, August 28, 1967; Ord. No. 132, August 29, 1967; Sec. 6, C.O. 1971; Ord. No. 151, August 5, 1971; Sec. 25-9.2, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-12.4, 1978 Cumulative Supplement; Ord. No. 491, July 8, 1986; Ord. No. 595, November 7, 1991; Ord. No. 697, October 12, 1995; Ord. No. 704, June 28, 1996; Ord. No. 726, June 4, 1998; Ord. No. 751, November 6, 2000)

Sec. 25-13.5 Billing And Collection Of Charges.

(a) Billing of Charges. The sewer service charge levied pursuant to this Chapter shall be billed by the Director of Finance, or the Department of Water of the County of Kauai, or his or its authorized agent. Billing shall be made on a bimonthly basis. Payment shall be made within thirty (30) days after billing.

(b) Collection of Charges. The sewer service charge levied pursuant to this Chapter shall be collected by the Director of Finance, County of Kauai, or his authorized agent.

(c) Billing of Charges Upon the Change of Ownership. The sewer service charges levied pursuant to this Chapter accrue to the legal owner of the benefitted property. In the event of a transfer of ownership of the benefitted property, the sewer service charges shall be prorated as to the former and current owner as of the date on which title was transferred.

(d) Suspension of Charges. Sewer service charges may be suspended for demolition or removal of the structure(s) or removal of all plumbing fixtures requiring discharge to the sewer system. A Request for Suspension of Sewer User Charges shall be submitted to the Division of Wastewater Management on the appropriate form.

(1) Residential Users with only flat charge. Sewer service charges may also be suspended for vacancy of the residence after a vacancy of a minimum of one calendar month with the period starting the first of the month following the date of vacancy. Vacancy must be verifiable by the absence or termination of water service or electrical service and verification must be submitted with the request to suspend. Suspension of charges shall begin the first of the month after qualifying for suspension.

(2) Users with flat plus volume charge. Sewer service charges may also be suspended after removal of the water meter(s) servicing the property. Verification of removal of the water meter must be submitted with the request to suspend. Suspension of charges shall begin the first of the month following the date of qualifying for suspension.

(e) Adjustment of Charges. Sewer service charges for users with a flat plus volume charge may be adjusted due to excess water consumption resulting from a leak. The sewer service charge will be adjusted based on the quantity of water that the Department of Water approves as being attributable to the leak. A request for adjustment due to a water leak shall be made in writing to the Division of Wastewater Management, including confirmation from the Water Department of the quantity attributable to the leak. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-9.3, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-12.5, 1978 Cumulative Supplement; Ord. No. 595, November 7, 1991; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998; Ord. No. 751, November 6, 2000)

Sec. 25-13.6 Charges For The First And Last Months.

(a) For any lot for which connection is made to the public sewer pursuant to Sec. 25-2.1(a), either directly or indirectly, a sewer service charge shall be made pursuant to this Chapter starting from the first day of the month following the date of the connection.

(b) For any lot not connected to the sewer system within 120 (one hundred twenty) days after being notified to do so pursuant to Sec. 25-2.1(a), a sewer service charge shall be made pursuant to this Chapter, starting from the first day of the month following the 120 day period.

(c) Where it is proposed to discontinue any connection to the sewer from any lot, parcel of land, building or premises upon a written notice being given to the Sewer Division of the Department of Public Works, County of Kauai, by the owner of the lot, parcel of land, building or premises, the owner, subject to conditions and inspection by the County Engineer, may disconnect the lateral sewer, and the sewer charge for the month within which the discontinuance of sewer service takes place shall be for the full month based on the regular monthly charge to the lot, parcel of land, building, dwelling units or premises. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-9.5, R.C.O. 1976; Sec. 25-12.6, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995; Ord. No. 726, June 4, 1998)

Sec. 25-13.7 Notification.

Each user shall be notified annually, of the rate and that portion of the user charges which are directly related to the operation, maintenance and replacement of the wastewater treatment systems.

Notification shall be made by the Director of Finance in conjunction with a regular bill. (Ord. No. 453, December 12, 1983; Ord. No. 697, October 12, 1995)

Sec. 25-13.8 Inconsistent Agreements.

This Chapter shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of Section 204(b)(1)(A) of the Clean Water Act and in the user charge section of the Federal regulations (40 CFR 35.2140). (Ord. No. 453, December 12, 1983; Ord. No. 697, October 12, 1995)

Section 25-13.9 Sewer Credit Based On Income.

(a) Definitions. As used in this section:

"Director" means the County Director of Finance.

"County Engineer" means the County Engineer, Department of Public Works, County of Kauai or a duly authorized representative.

"Income" means the greater of either 1) a residential sewer customer's adjusted gross income under the U.S. Internal Revenue Code of 1954, as amended, or 2) a residential sewer customer's adjusted gross income under Chapter 235, H.R.S.

"Residential sewer customer" or "customer" means a natural person living in a dwelling unit, who is classified as a residential user under Sec. 25-13.5(b), and who owns, rents, or leases the dwelling unit receiving County sewer service.

(b) A residential sewer customer shall be granted a monthly credit of $20.00 if the conditions of paragraph (c) of Sec. 25-13.9 are satisfied. The credit shall be effective the calendar month immediately following the month that the customer has satisfied the conditions of paragraph (c) of Sec. 25-13.9.

The County General Fund shall pay for all credits granted.

(c) No credit shall be granted under this section unless the Director determines that a residential sewer customer has satisfied the following conditions:

(1) The customer shall sign the application form promulgated by the Director. Where the applicant is a tenant or lessee, the legal owner of the property benefited by the County's sewer service shall also execute the application form. The tenant or lessee and the legal owner shall also provide their address of record in the application form.

In the application form, the customer shall consent to the release of, and authorize the State Department of Taxation to release to the Director at any time during the time which the customer receives a residential sewer credit, certified copies of those portions of the customer's state personal income tax return or records showing the customer's adjusted gross income under Chapter 235, H.R.S. This authorization and consent shall be used by the Director for purposes of verifying the customer's income and, therefore, eligibility for the credit granted under this Sec. 25-13.9. The customer shall execute any additional forms required by the Director or the State Department of Taxation to facilitate the release of tax information required under this subparagraph (1).

(2) The dwelling unit in which the customer resides must be the customer's principal residence. The customer may receive the credit only if the dwelling unit in which the customer resides is the customer's principal residence.

A husband and a wife shall not each be entitled to a credit on separate dwelling units owned, in whole or in part, by either or both of them unless they live physically separate and apart, on a continuous basis, in separate dwelling units.

(3) A residential sewer customer's annual income shall not exceed $40,000.00 for the calendar year immediately preceding the year in which the customer applies for the credit.

The customer's annual income shall not exceed $40,000.00 at any time during the time which the customer enjoys the benefit of the credit under this Sec. 25-13.9.

(4) The residential sewer customer shall submit with his or her application filed copies from those portions of the customer's federal and state personal income tax return or records for the calendar year

immediately preceding the year in which the customer applies for the credit, showing the customer's 1) adjusted gross income under the U.S. Internal Revenue Code of 1954, as amended, and 2) adjusted gross income under Chapter 235, H.R.S.

If a customer was not required to file a personal income tax return under either the U.S. Internal Revenue Code of 1954, as amended or Chapter 235, H.R.S., or both, the customer shall sign and submit an affidavit attesting to the income the customer received from all sources for the calendar year immediately preceding the year in which the customer applies for the credit. The Director shall prescribe the form of the affidavit.

The Director may deny the application of any customer who fails or refuses to provide the proof of income required under this paragraph (c) of Sec. 25-13.9. The Director may also deny a customer's application if the customer fails or refuses to provide information or documents the Director believes is reasonably necessary for purposes of verifying that the customer has satisfied the conditions of this paragraph (c) of Sec. 25-13.9.

(d) The Director and the County Engineer shall prescribe the application form and other forms relating to the credit granted under this Sec. 25-13.9.

(e) The Director shall annually obtain from the state Department of Taxation certified copies of income tax records from at least one percent (1%) of all customers receiving the residential sewer credit for purposes of verifying that the customers continue to satisfy the income qualification requirements under paragraph (c) of Sec. 25-13.9. The County Engineer and the Director shall verify the information to satisfy the income qualification requirements under paragraph (c) of Sec. 25-13.9. For this purpose, records shall be randomly selected.

(f) Any credit granted under this Sec. 25-13.9 shall continue in effect until one or more of the following events occur:

(1) A customer receiving the credit fails to satisfy any condition or requirement under paragraph (c) of this Sec. 25-13.9.

(2) A customer receiving the credit is no longer a "residential sewer customer" as defined under this Sec. 25-13.9.

Upon the occurrence of any event described immediately above, or any event described in this paragraph (f) which would cause a customer to lose his or her credit, the Director shall terminate the customer's residential sewer credit. The credit shall be terminated sixty (60) calendar days after the date that the Director sends a notice of termination to the customer and legal owner. The notice shall be sent via certified mail to the customer's and legal owner's address of record.

A customer receiving the credit shall have a duty to report to the Director any fact or event that would cause the

customer to lose his or her residential sewer credit including, but not limited to, the fact that the customer's annual income exceeds $40,000.00 and that the dwelling unit in which the customer resides is no longer the customer's principal residence. The customer shall report any such facts or events within thirty (30) calendar days of their occurrence. The customer's failure or refusal to report any such fact or event within the specified time shall constitute sufficient basis for the Director to terminate the customer's credit.

If the Director has reasonable basis to believe that a customer receiving the credit no longer satisfies the income qualification requirement under paragraph (c) of Sec.25-13.9, the Director may require the customer to provide evidence of the customer's income. Such evidence may include, but shall not be limited to, filed copies of the customer's federal and state personal income tax return or records showing the customer's adjusted gross income under the U.S. Internal Revenue Code of 1954, as amended, and adjusted gross income under Chapter 235, H.R.S. The Director may also require the customer to obtain and submit certified copies of such returns and records from the U.S. Internal Revenue Service or state Department of Taxation. The customer's failure or refusal to provide the required tax information shall constitute sufficient basis for the Director to terminate the customer's credit.

(g) Any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of his sewer bill or any part thereof, or who in any manner intentionally deceives or attempts to deceive the Department of Finance to receive the credit granted by this Sec. 25-13.9, shall be fined $1,000 or imprisoned for not more than one year, or both.

(h) The Director and the County Engineer may adopt rules pursuant to Chapter 91, H.R.S. for purposes of implementing and administering this section. (Ord. No. 793, October 29, 2002)

ARTICLE 14. SEWER FUNDS AND DELINQUENT ACCOUNTS

Sec. 25-14.1 Disposition Of Funds Collected.

(a) All monies received pursuant to this Chapter shall be deposited into a special fund to be known as the "County Sewer Fund" and shall be expended as provided for in this Chapter and as authorized by the County Council.

(b) A separate account shall be established to record all revenues from sewer service charges, including strength surcharges. Expenditures from this account shall be restricted to the operation and maintenance of the sewer systems, including replacement as defined by the EPA and repayment of SRF loans.

(c) Separate accounts shall be established to record all revenues from connection charges and assessments for

Wastewater Treatment Capacity. Expenditures from these accounts shall be restricted to capital type costs, including repayment of SRF loans. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-9.6, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-13.1, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995; Ord. No. 704, June 28, 1996)

Sec. 25-14.2 Delinquent Accounts.

Failure to pay any sewer charge shall constitute a lien on the property and shall be charged interest at the rate of one percent (1%) per month until full payment is made. In the event legal action is instituted for collection, the County shall be reimbursed for all costs of collection including reasonable attorney's fee. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-9.4, R.C.O. 1976; Ord. No. 345, April 3, 1978; Sec. 25-13.2, 1978 Cumulative Supplement; Ord. No. 697, October 12, 1995)

Section 25-14.3 Uncollectible Delinquent Accounts.

The Director of Finance or his authorized representative may, from time to time, prepare a list of all delinquent user fees, which in the judgment of the Director of Finance or his authorized representative, finds to be uncollectible after reasonable attempts and upon recommendation of the County Attorney, shall be written off as an uncollectible bad debt and shall be deleted from the active collection account records kept by the department; and the department shall thereupon be released from any further accountability for their collection, provided that no account shall be so deleted until it shall have been delinquent for at least two (2) years and does not exceed $1,000. Uncollectible accounts which exceed $1,000 shall be written off only upon approval of the County Council. Any item so deleted may be reinstated as an active collectible account if the Director of Finance or his authorized representative finds that such items are, in fact, collectible or that the alleged facts as previously presented were not true. (Ord. No. 751, November 6, 2000)

ARTICLE 15. PENALTY

Sec. 25-15.1 Penalty.

Any person convicted of violating any provision of this Chapter shall be punished by a fine not exceeding five hundred dollars ($500) and/or thirty (30) days in jail for each offense except that any person who fails to connect to an accessible sewer, pay sewer connection charges, or sewer services charges shall be guilty of a violation with a fine not exceeding five hundred dollars ($500). A separate offense is committed upon each day during or on which a violation occurs or continues. (Ord. No. 131, August 28, 1967; Sec. 6, C.O. 1971; Sec. 25-11.1, R.C.O. 1976; Sec. 25-14.1, 1978 Cumulative Supplement; Ord. No. 670, January 18, 1995; Ord. No. 697, October 12, 1995)

APPENDIX "A"

TABLE OF ORGANIZATION OF THE EXECUTIVE AGENCIES